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R. G. Ingersoll

Dresden Edition

# THE WORKS

OF

# *Robert G. Ingersoll*

"JUSTICE SHOULD REMOVE THE BANDAGE FROM HER EYES LONG ENOUGH TO DISTINGUISH BETWEEN THE VICIOUS AND THE UNFORTUNATE."

IN TWELVE VOLUMES

VOLUME X.

## LEGAL

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# THE MUNN TRIAL.

## ADDRESS TO THE JURY IN THE MUNN TRIAL.*

IF the Court please and the gentlemen of the jury: Out of an abundance of caution and, as it were, an extravagance of prudence, I propose to make a few remarks to you in this case. The evidence has been gone over by my associates, and arguments have been submitted to you which, in my judgment, are perfectly convincing as far as the innocence of this defendant is concerned. I am aware, however, that there is a prejudice against a case of this character. I am aware that there is a prejudice against any man engaged in the manufacture of alcohol. I know there is a prejudice against a case of this kind; and there is a very good reason for it. I believe to a certain degree with the district attorney in this case, who has said that every man who makes whiskey is demoralized. I believe,

* The United States vs. Daniel W. Munn, Deputy Supervisor of Internal Revenue, who was indicted under Section 5440 of the Revised Statutes of the United States.

There was an unusual rush to obtain admission to the United States District Court-room yesterday to listen to the closing arguments of counsel in the Munn whiskey conspiracy trial which has attracted so much attention during the past ten days. The stalwart deputy who guards the entrance to this judicial precinct was compelled to employ his entire strength and power of persuasion to keep the eager, anxious crowd from trespassing on the convenience and dignity of the court. About ten o'clock the Court took the bench, and Col. Ingersoll walked into the room, took off a broad-brimmed felt hat, which gives the barrister, while he has it on, somewhat the appearance of a full-grown, well-developed Quaker in good standing in the society to which he belongs. When he has the hat removed, however, the counsellor's appearance undergoes a marked change. He then looks like the crop-haired follower of the house of Montague in the Shakespearean play. He sat down on a crazy old chair which threatened every moment to break down beneath his weight, and listened to the remarks of Judge Doolittle for the remainder of the morning, until it came his time to talk. Colonel Ingersoll never troubles himself to take notes of anything. What he cannot recollect he does not have any use for.

Judge Doolittle occupied the morning session until the time for adjournment at one o'clock, with a review of the case on the side of the defence. He was followed by Mr. Ingersoll in the afternoon.

At two o'clock the court-room was more crowded than before, and at that hour Mr. Ingersoll appeared in the forum and delivered his speech in behalf of the defendant.—*The Times*, Chicago, Ills., May 23, 1876.

gentlemen, to a certain degree, it demoralizes those who make it, those who sell it, and those who drink it. I believe from the time it issues from the coiled and poisonous worm of the distillery, until it empties into the hell of crime, dishonor, and death, that it demoralizes everybody that touches it. I do not believe anybody can contemplate the subject without becoming prejudiced against this liquid crime. All we have to do, gentlemen, is to think of the wrecks upon either bank of the stream of death—of the suicides, of the insanity, of the poverty, of the ignorance, of the distress, of the little children tugging at the faded dresses of weeping and despairing wives, asking for bread; of the men of genius it has wrecked; the millions struggling with imaginary serpents produced by this devilish thing. And when you think of the jails, of the almshouses, of the asylums, of the prisons, of the scaffolds upon either bank—I do not wonder that every thoughtful man is prejudiced against the damned stuff called alcohol. And I know that we, to a certain degree, have to fight that prejudice in this case; and so I say, for this reason among others, I deem it proper that I should submit to you, gentlemen, the ideas that occur to my mind upon this subject.

It may be proper for me to say here that I thank you, one and all, for the patience you have shown during this trial. You have patiently heard this testimony; you have patiently given your attention, I believe, to every word that has fallen from the lips of these witnesses, and for one I am grateful to you for it.

Now, gentlemen, understanding that there is this prejudice, knowing at the time the case commenced that it existed, I asked each one of you if there was any prejudice in your minds which in your judgment would prevent your giving a fair and candid verdict in this case, and you all, honestly, I know, replied that there was not. The

district attorney, Judge Bangs, stated to you in the opening of this case, for the purpose of preparing your minds for the examination of this testimony, that you must, first of all, divest your minds of sympathy. I do not say that, gentlemen, neither would I say it were I the attorney of the Government of the United States, but I do say this: Divest yourselves of prejudice if you have it, but do not, gentlemen, divest yourselves of sympathy. What is the great distinguishing characteristic of man? What is it that distinguishes you and me from the lower animals—from the beasts? More, I say, than anything else, human sympathy—human sympathy. Were it not for sympathy, gentlemen, the idea of justice never would have entered the human brain. This thing called sympathy is the mother of justice, and although justice has been painted blind, never has she been represented as heartless until so represented by the district attorney in this case. I tell you there is no more sacred, no more holy, and no purer thing than what you and I call sympathy; and the man who is unsympathetic is not a man. Gentlemen, the white breast of the lily is filthy as compared to the human heart perfumed with love and sympathy. I do not want you to divest yourselves of sympathy, neither do I want you to try the case entirely upon sympathy, but I want you sympathetic enough to put yourselves honestly in the place of this defendant. Now, gentlemen, as a matter of fact, this case resolves itself into simply one point; all the rest is nothing; all the rest is the merest fog that can be brushed from the mind with a wave of the hand, and it is all resolved down to simply one point, and that is: Is Jacob Rehm worthy of credit? Has Jacob Rehm told against this defendant a true story?

Now, that is all there is in this case. The other points that they raise, and which I shall allude to before I get through, are valuable only as they cast a certain amount of

suspicion upon the defendant, but the real point is, and the attorneys for the Government know it, Is Mr. Jacob Rehm's story worthy of credit? Did he tell the truth? Judge Bangs felt that was the only question, and for that reason, in advance, he defended the reputation of Jacob Rehm for truth and veracity; and he made to the jury this remarkable statement: "The reputation of Jacob Rehm for truth and veracity is good. It spreads all over the city of Chicago like sunlight." That was the statement made by the district attorney of the United States. I do not believe that he would swear to that part of his speech. It was an insult to every person on this jury. It was an insult to this court; it was an insult to the intelligence of every bystander, that the reputation of Jacob Rehm spread like sunlight all over the city of Chicago! My God! what kind of sunlight do you mean? Think of it!

Now, then, gentlemen, he knew it was necessary to defend the character of Mr. Rehm; he knew it was necessary to defend that statement. He knew that the testimony of Mr. Rehm was the only nail upon which the jury could possibly hang a verdict of guilty in this case.

And now I propose to examine a little the testimony of Mr. Jacob Rehm. I believe it was stated by Judge Bangs that one of the best tests of truth was that a lie was at war with all the facts in the universe, and that every fact standing, as it were, on guard, was a member of the police of the universe to arrest all lies.

Let me state another truth. Every fact in the universe will fit every other fact in the universe. A lie never did, never will fit anything but another lie made to fit it. Never, never! A lie is unnatural. A lie, in the nature of things, is a monstrosity. A lie is no part of the great circle, including the universe within its grasp, and consequently, as I said before, will fit nothing except another lie. Now, then, to examine the testimony of a witness,

you examine into its naturalness, into its probability, because you expect another man to act something as you would under the same circumstances. We have no other way to judge other people except by our own experience and an authenticated record of the experience of others, consequently, when a man is telling a story, you have to apply to it the test of your own experience, and as I say the recorded tests of other honest men.

Now, let us suppose just for a moment that the testimony of Mr. Jacob Rehm is true. Let us suppose it. It has been stated to you, and admirably stated, by Judge Doolittle,—admirably stated,—that it was the height of absurdity to suppose that a man would do as he did for nothing. But let me put it in another light somewhat. According to the testimony of Mr. Jacob Rehm, he first tried to stop this stealing. Nobody offered him any money to stop it, but he simply went to the collector, Irwin, and said they were stealing, and that it must be stopped; and thereupon Collector Irwin changed the gaugers for the purpose of stopping the stealing. A few days thereafter, somebody came to him and wanted the stealing to commence, and he told them they would have to pay for it, and the amount they would have to pay for it, and he then went to Collector Irwin, whom he supposed at that time to be a perfectly honest and upright man, and told him, in short, that they wanted to steal, and would give five hundred dollars a month. Irwin said, "Go ahead."

He admits that they did steal. He admits that they made a bargain with him. He admits that that happened, and he assigned all these gaugers and store-keepers. He admits that he did that for two years. He admits that he received at least one hundred and twenty thousand dollars of this money. He admits that in order to carry out this scheme he knew that every distiller would have to sign a lie every time he made a report

to the Government. He admits that he knew every gauger would have to swear to a lie at the end of every month in his report of the transactions of each day. He admits that every store-keeper would be guilty of perjury every time he made a report. He admits that he knew that the thing that he was committing for two years was a daily penitentiary offence. He admits that he put himself in the power of all these gaugers and all these store-keepers, and all these distillers and rectifiers,—put it in their power to have him arrested for a penitentiary offence at any moment during the whole two years, and yet he tells you that he did this absolutely for nothing! He tells you every cent he received he divided and paid over; that he never kept a solitary dollar, except it may be for a box of cigars. I want the attorney for the Government to tell this jury that he believes that story. And if he does tell you so, gentlemen, I will give you notice now that you need not believe any other word Mr. Ayer says—if he says he believes that.

Now, then, what more? He knew that all these men were committing these penitentiary offences, and that he was putting himself in the power of all these men; and what was his motive? What, gentlemen, was his object?

It is impossible for me to imagine. If he got no money, if he made nothing out of this transaction, it is impossible for me to imagine why he embarked in such a course of crime. Why then did he say to you, gentlemen, that he paid all this money over? It was to build up a reputation with you. It was to make you think that whereas he paid this all over, that whereas he did all this business simply to accommodate his friends, that he was worthy of credit in his statement of this case. He told you that he did not keep a dollar simply to make a reputation with you. What did he want a reputation with you for? So that he would be believed. And what did he want to be believed for? So that he could send Munn to the penitentiary and,

as the price of Munn's incarceration, get his own liberty. That is the reason he swore it, and there is no other reason in the world. Is it probable a man would commit all these crimes for nothing? Is it possible that he would hire and bribe other men to commit these crimes for nothing? I ask you; I ask your common sense; I appeal to your brains: Is it probable that he would do all that absolutely for nothing? Is it probable he would lay himself liable to the penitentiary every hour in the day for two years for nothing? There is and can be but one answer to such a question as that. Why, gentlemen, if his statement is true that he did all this for nothing, he is the most disinterested villain, the most self-sacrificing and self-denying thief of which the history of the world gives any record. Is it possible?

Is it possible, I say, that a man would make himself the sewer of all the official rot in this city, in which was deposited the excrement of frauds? Is it possible he would turn himself into a scavenger cart into which should be thrown all the moral offal of the city of Chicago for nothing? Whoever answers that question in the affirmative is, in my judgment, an idiot. Nobody can. Nobody has a mind so constructed that it can lodge an affirmative answer to that question within its brain.

What next? He tells you that Munn was in this plot; and that he, Mr. Rehm, at the same time was selling protection to these distillers. No distillers—and you know it—would have given him ten dollars a barrel unless they expected protection. He then was engaged in the sale of protection, was he not? Did you ever know of a vender crying down his own wares? Did you ever hear of a merchant crying down the quality of the cloth he wished to sell? Did you ever hear of a grocery man endeavoring to cry down that which he wished you to buy?

Jacob Rehm was selling protection at ten dollars a

barrel, and sometimes asking twelve dollars and fifty cents. Was it not natural for him to endeavor to convince distillers that he had plenty of protection to sell? Was it not natural for him to make the distillers believe, "If you will give me ten dollars a barrel you will have perfect protection"? Would it be natural for him to say, "I will protect you for ten dollars a barrel, and yet I have none of the officers in my pay"? They would say, "What kind of protection have you got, sir?" Would it not be natural for him to make out his protection as good as he possibly could? Would it not be natural for him to tell you, "I have got all these officers on my side, from the lowest gauger to the gentleman who presides over the internal revenue department at the city of Washington"? The more protection he had the more money he could get, and consequently it would not be natural for him to cry down his own protection.

If Mr. Munn was in it, and if Mr. Munn at that time was the superior officer of the collector, and this man had protection to sell, would he not have said that Munn was also in the ring? When he was trying to sell protection to George Burrows at ten dollars a barrel, George Burrows asked him if Munn was in the ring and he said he was not. If Mr. Munn had been why didn't he say that Munn was? For the reason that that would make his protection appear to be of a better quality, and he could have sold it at a better price. But he said "no," and that they did not need him, because they could manage him, and fool him through this man Bridges, and you will recollect that Bridges was appointed directly by the Government and not by Munn; and Bridges reported directly to the Government and not to Munn. He had nothing to do with him one way or the other, except that they were both in the Revenue Department.

Now, I say if it is possible that a man can cry down his

own wares that he wishes to sell, then you may say that the statement of Rehm is natural.

Now, gentlemen, why should he inform Burrows that Munn was about to make a visit here? In order that Burrows might have an opportunity to have his house put in order. Why should he have sent notices to other distillers that Munn was coming? Why should he tell them to put their houses in order? So as to be ready for a visit from Mr. Munn. It may be that the counsel for the Government will say, "This shows the infinite fidelity of this infinite rascal."

Now, I will come to this part of my argument again, but the next thing I will speak of is his story, where he says that he actually paid the money to Munn himself, and if there is anything left of that after I get through with it you are at perfect liberty to find the defendant guilty. You must recollect that he had a bargain. Now, according to his story, he paid this money to Bridges. You must recollect, according to his story, that Munn at that time was one of the conspirators, had been receiving money—a half of thirty-five thousand dollars or forty-five thousand dollars having gone into his pocket. Recollect that. He goes over one day to the rectifying-house of Roelle & Junker, and there are some barrels found, the stamps of which had not been scratched. Mr. Munn was assured by Roelle that there was no fraud. Roelle still swears that there was no fraud. He was afterward assured by Junker that there was no fraud. Junker still swears that there was no fraud.

Now, what does Rehm come in to swear? Rehm says that Bridges came to him and told him that Munn was going to make trouble—going to make trouble about these barrels that had the stamps on that were not scratched off. Why did not Rehm say to him, "How is he going to make a fuss? He has got twenty thousand dollars of money

already. He is in the conspiracy. He is a nice man to make a fuss! What is he going to make a fuss about?" Would it not have been just as likely that Bridges should have made a fuss as that Munn should have made it? Bridges, according to the testimony of your immaculate witness, was in this no more than Munn—not one particle. And why was Munn going to make trouble? Mr. Rehm has endeavored to answer that question. Mr. Rehm then goes to Munn, sent there by Bridges—it would be very hard to find out why he did not give the money to Bridges,—but he went to Munn and says: "You are going to make some trouble about what you found at Roelle & Junker's?"

"Yes."

"Why?"

"Because," he says, "the men at work there—the persons employed there—will make a fuss about it, but they will see it and say that it is overlooked."

Now, that is the reason that Rehm puts in the mouth of the defendant. Afterward he goes himself to Junker and advises him to give him five hundred dollars, and Junker proposes one thousand dollars, and gives him one thousand dollars, and then he sends for Munn and he comes to his office, and he hands him one thousand dollars.

Now, gentlemen, the reason Munn gave was that the men there would notice it and make a disturbance about it.

Well, then, why not pay the men? What is the use of paying Munn? If this was done to prevent the men working at the rectifying-house from making trouble, why not pay the men? Why not pay the men who were going to make the trouble? Why give an extra thousand dollars to a conspirator to whom you had already given twenty thousand dollars, and who, at that time, according to the testimony of Rehm, was officially rotten? Why not give the money to men who were going to make the trouble?

And the next questior is this—and if you will recollect

the testimony of Roelle, he swears that when the defendant came to the rectifying-house, he (Roelle) was alone. He swears that he was alone. He swears that all the rest had gone to dinner, and according to Roelle's testimony there was nobody there but himself. Where were the men that were going to make this disturbance? Where were the men that were going to notice this oversight? Where were the men that were going to stir up difficulties at Washington or any other place? According to the testimony of Roelle those people were at dinner, and where, gentlemen, is the philosophy of that lie which they have told? Where is it? Why should he have paid Munn money? Why didn't he pay it to Bridges? If it was for the purpose of stopping the men from making trouble, why not pay it to the men they wished to stop? I ask the gentlemen to answer that question. I ask the gentlemen to tell us what men were in danger of making this trouble? Was it the gauger who received six hundred dollars a month for being a liar and a thief? Was it the book-keeper who, every report that he made, swore to a lie? Was there any danger of these liars and of these thieves making a fuss on their own account? Was there any danger of that gauger stopping his own pay? Was there any danger of that book-keeper trying to throw himself out of employment? Was there any danger of any thief or of any conspirator saying anything calculated to bring this rascality to the surface? If a bribed gauger would not tell it; if a bribed book-keeper would not tell it, I ask the Attorney-General for the Government, would Munn tell it, who had received, according to your evidence, over twenty thousand dollars of fraudulent money? Was there any danger of Munn turning state's evidence against himself? Was there not just as much danger of Bridges making a fuss as Munn? Was there not, according to their testimony, the same danger of Rehm himself going to Washington as there

would be of a bribed gauger, and of a lying book-keeper? Gentlemen, your story won't hang together. There is no philosophy in it, and it will not fit anything except another lie made on purpose to fit it; and it has got to be made by a better mechanic than Jacob Rehm.

Now, then, gentlemen, what more? The district attorney told you, and I was astonished when he told it—I was astonished—he said that the testimony of Jacob Rehm was not impeached; that, on the contrary, it was sustained by these other witnesses. Had he made such a statement under oath I am afraid an indictment for perjury would lie. He said that the testimony had been sustained rather than impeached. How sustained?

"Mr. Rehm, did you ever give Mr. Burroughs notice that Mr. Munn was coming in order that he might put his house in order?"

Mr. Rehm says, "No."

We then asked Mr. Burroughs, "Did Mr. Rehm ever give you such notice?" and he corroborates Mr. Rehm by saying "Yes," if that is what you call corroboration.

"Did you tell Mr. Hesing that Munn was not in it?" "I did not."

"Mr. Hesing, did Mr. Rehm tell you that Munn was not in it." "He did."

That is another instance of the attorney's idea of corroboration.

"Did you tell Hesing that Hoyt was innocent?" "I did not."

"Mr. Hesing, did Mr. Rehm tell you that Hoyt was innocent?" "He did."

Another corroboration.

"Did you tell him that Munn never was in it—that Munn was innocent?" "No."

We then asked him,

"Did he tell you that?" "He did."

We say to Burroughs,

"In 1874, in 1873, in 1872, did Rehm tell you that Munn was not in it?" "He did."

That is another idea I suppose of corroboration.

Q. Mr. Rehm, how much money did the house of Dickenson & Leach give you? A. Twenty-five thousand dollars.

Q. Will you swear they did not give you thirty? A. I will.

Mr. Leach on the stand:

Q. How much money did your house give Rehm? A. Between forty thousand and fifty thousand dollars.

Another instance of corroboration.

We then called Mr. Burroughs upon the stand. He belonged to the same house:

Q. How much money did you give Jacob Rehm? A. Fifty-two thousand dollars.

Another instance of corroboration.

Q. Mr. Rehm, did Mr. Abel ever give you any money? A. Yes, sir.

Q. How many times? A. Once.

Q. How much? A. Five hundred dollars.

Q. Will you swear it was not a thousand? A. Yes.

Mr. Abel take the stand.

Q. Did you ever pay Jacob Rehm any money? A. Yes.

Q. How often? A. Once.

Q. How much? A. Two thousand dollars.

And that is another instance of the corroboration of Jacob Rehm. And when a man is thus corroborated, gentlemen, his reputation for truth and veracity "spreads like sunlight all over the city of Chicago." There was not a circumstance, there was not a statement made by Mr. Rehm except it was made in the presence of Bridges, who is in Canada; of Irwin, who is in his grave, or in the presence of the defendant, who stands here with his mouth closed—not one solitary circumstance, with those exceptions, that has not been contradicted. Can you believe this man? Can you believe this man who has been contradicted by every one brought upon the stand? Can you take his word after he has sworn as he has? I tell you, gentlemen, you cannot do it, and as Judge Doolittle told you, if there is an infamous crime in the world, it is the crime of perjury. All the sneaking instincts; all the groveling, crawling instincts unite and blend in this

one crime called perjury. It clothes itself, gentlemen, in the shining vestments of an oath in order that it may tell a lie.

Perjury poisons the wells of truth, the sources of justice. Perjury leaps from the hedges of circumstance, from the walls of fact, to assassinate justice and innocence. Perjury is the basest and meanest and most cowardly of crimes. What can it do? Perjury can change the common air that we breathe into the axe of an executioner. Perjury out of this air can forge manacles for free hands. Perjury out of a single word can make a hangman's rope and noose. Perjury out of a word can build a scaffold upon which the great and noble must suffer. It was told during the Middle Ages and in the time of the Inquisition, that the inquisitors had a statue of the Virgin Mary, and when a man was brave enough to think his own thoughts he was brought before this tribunal and before this beautiful statue, robed in gorgeous robes and decked with jewels, and as a punishment he was made to embrace it. The inquisitor touched a hidden spring; the arms of the statue clutched the victim and drew him to a breast filled with daggers. Such, gentlemen, is perjury, and if you take into consideration the evidence of this witness when you retire to the jury-room, you, in my judgment, will commit an outrage. Every man here should spurn that man from the threshold of his conscience as he would a rabid cur from the threshold of his house.

Is there any safety in the world if you take the testimony of these men, especially when character avails nothing? Is there any safety in human society if you will take the testimony of a perjured man? Is there any safety in living among mankind if this is the law,—if the statement of a confessed conspirator makes the character of a great and good man worthless? For one I had rather

flee to the woods and live with wild beasts and savage nature.

Gentlemen, I know that you will pay no attention to that kind of testimony. I know it. I know that you cannot do it. And why? You know that that man is swearing a lie for the purpose of protection. You know that that man is swearing a lie under the smile of the Government of the United States. You know it. You know he expects a benefit from it. You know it. When the other witnesses, Burroughs and Hesing, that swear here—understand that they are swearing beneath a frown. Understand that they know that no mercy will be extended to them by the attorneys that they have offended. Understand that, and when you understand that a man is swearing to protect himself, and when he is a man that will swear to a lie for money, of course he will swear to a lie to keep himself out of the penitentiary, or to shorten his time —I say, when you know a man is placed in that condition, you have no right to give the least weight to his testimony, not one particle.

What more, gentlemen. Why, they have another witness, and he has sworn nothing. He has sworn nothing that has anything to do with this conspiracy one way or the other. Nothing! The only evidence against the defendant, I tell you, is the evidence of Mr. Jacob Rehm.

The defendant, gentlemen, was an officer of the revenue for several years. When he came to Chicago, in 1871, the district attorney said the distillers were here in full blast making illicit whiskey. If he had read the evidence he knew better; if he had not, he had no business to make any statement about it. In 1871, when the defendant came here, according to the testimony of all these men, the distilleries were running straight, and the rascality did not commence until the fall of 1872, when Jacob Rehm sold protection to these distillers. The defendant had been

here a year before any frauds were committed. He was then supervisor of internal revenue up to May, 1875. During that time he did many official acts: during that time he wrote hundreds and thousands of letters; during that time he made hundreds and hundreds of visits to all these establishments. They have searched the records; they have had every nook and cranny looked at by a hired detective, and all that they can possibly bring forward is the beggarly account presented in this case: First, that there were four or five barrels of rum without the ten cent stamps, and that, you know, is a thing that ought to send a man to the penitentiary; next, twenty-five barrels of which the stamps had not been scratched, but about which there was no fraud. Ought a man to be sent to the penitentiary because he does not seize a house when there has been a technical violation without any fraud? A supervisor that will do it ought to be kicked out of office; he ought to be kicked out of the society of honest and decent men, and if this defendant was satisfied from the story of Roelle and Junker that there had been no fraud committed by leaving the stamps on the twenty-five barrels unscratched, and had seized that house, that would have been an act of meanness, an act of oppression, which I do not believe even a Government attorney would uphold unless he was hired in the case. Now, what next did he do? The next thing he did he went to Golsen & Eastman. Gentlemen, I do not care to speak much of Golsen. If there ever was a man utterly devoid of such a thing as principle, if there ever was a man that would read the statute against stealing, and stand in perfect amazement that anybody ever thought of making such a statute, it certainly must be Golsen. You heard him, and he is the man that said he told lies in business; he is the man that said he did not think it was wrong to swear lies in business, and his business now is to keep out of the peniten-

tiary; that is his principal business, that is one of the gentlemen they have hired, that is one of the gentlemen they have brought forward here to offend the nostrils of decent men. Now, then, he went to Golsen & Eastman. Judge Bangs told you in his speech that Golsen then and there explained his infamy to Munn.

If there is anything which makes my blood boil it is to have the evidence misstated for the purpose of putting a man in the penitentiary. I never will make a misstatement to add to my reputation.

I recollect that evidence so perfectly. I recollected it so clearly that it shocked me when he stated that the man Golsen explained all his rascality and villainy to Munn. Why, I never heard of such evidence. What was it? It was said by Mr. Ayer in the opening that in the presence of Munn, Golsen said to Bridges, "It is not now all right," or something like that, "but I can make it right," or that he said in the presence of Munn, to Bridges, something that should have put Munn on his guard. I heard that, and I heard Golsen, when he came on the stand, say that he said that to Bridges, and you will bear me out when I say that I asked him in his cross-examination, "Did Munn hear it? Did you say it thinking that Munn did hear it?" and he did not pretend any such thing. He did not pretend it, and I tell you I was hurt, I was touched, I admit it, when Judge Bangs made the statement. I have an interest in this case. I am not only an attorney in this case, but, gentlemen, I am proud to say I am the defendant's friend. I am more than his attorney; I am his friend, and when an attorney makes a statement like that I must say it shocks me. Golsen did not swear that he explained his villainy to Munn—not a word of that kind or character. On the contrary he simply said he told this to Bridges, not to Munn, and that Munn did not hear it.

What more? Col. Eastman was there at the same time.

Col. Eastman says he did everything he could to impress upon Mr. Munn that it was an honest transaction. What more? Then he went through the rectifying-house like an honest man. How did he act? Like an honest man. Did he act like somebody trying to cover up a fraud? No, he acted like an honest man, and I tell you up to that time Mr. Eastman had borne a good reputation—a good character in the state of Illinois. Munn believed what he said. He believed there had been an accident. Munn believed they made the charge in the books not for the purpose of covering up a fraud, but for the purpose of making the books agree with the facts. So much for that.

I do not recollect any others. I do not recollect any others that amount to anything—that can throw the slightest suspicion on this defendant. If he were upon trial now for failing to make a report; if he were on trial now for malfeasance or non-feasance or negligence as an officer, it would be proper to bring all these things before this jury, but that is not the case. He is here for entering into a conspiracy to defraud the Government, and these things that they have shown outside,—and it is perfectly amazing to me they have not shown more,—it is perfectly amazing to me that a man could be in that position the years he was without making more mistakes—I say, all they prove in the world is (give them their very worst construction), that he was guilty of some negligence as an officer, but they do not attempt to prove that he was in a conspiracy with Mr. Jacob Rehm to steal.

The next point, gentlemen, to which I wish to call your attention is the testimony of Mr. Rehm before the grand jury. You recollect when we put on Mr. Ward to show what Rehm testified to before the grand jury, that Mr. Ayer suggested that we had better have the notes. I saw then that he was extremely anxious for Schlichter to get on the stand. Then we introduced Mr. Oleson, and he still spoke

about having the notes. I understood that it was a part of his case to have Schlichter brought on the stand in some way. Now, then, it does not make any difference to me whether Schlichter swore to the truth or not. Not a particle, not a particle, but I think he did. But if he did swear a lie, and he will swear a lie every chance he gets, in the course of time he will get such a character and such a reputation that a district attorney of the United States will stand up and say: "Schlichter's reputation is good; it spreads like sunlight all over the city of Chicago." Now, then, you have been told by Judge Doolittle all the men who swore that he did swear before the grand jury, that he did not know of any crookedness. You have heard the testimony of men who swear that he did swear before the grand jury that he knew of no fraud. If he did so swear he perjured himself or he has perjured himself now. But what more? Whether he swore that or not, he swore this according to their own statements:

Q. At the time you burned your books had you any knowledge that they contained any evidence of fraud against the Government? A. No, sir.

Now, he knew the distillers used a certain amount of malt to make a certain amount of high-wines, and he knew the more malt they used the more high-wines they would have to account for, and if they bought twice as much malt as was necessary to make the whiskey upon which they paid the tax, he knew that that was evidence that they had been running without paying the tax. If it takes a certain amount of malt for a gallon of high-wines, and his books would show they had used twice as much malt as they had paid taxes, according to gallons, then he did know that his books did contain evidence showing that they had committed fraud. And when he said his books did not, he told what he knew was a deliberate lie. What more does he say? He says these books were burned up

about the first of May just to get them out of the way,—for no earthly object except simply to get them out of the way,—and he swears that he sold to nearly all these distillers malt, and he knew that the amount of malt sold to each of these distilleries would determine the amount of whiskey they had made, that is, not into a barrel or into a gallon, but approximately, and he knew the more malt they used the more tax they would have to show that they had paid. And he knew that his books would be evidence against every distiller in the city. He knew that, and yet he swears here, squarely and fairly, that at the time he burned his books he did not know that they were of any value as evidence against these distillers.

Now, gentlemen, I want to call your attention to another thing. When I asked him, when he was called here on the stand, if he was not asked about crookedness, whether he was not asked about fraud, at first he stumbled into telling the truth, as far as that was concerned, as far as being asked was concerned, and then told a lie as to how he answered it. Now, let me read it to you; you may have forgotten it. There is nothing like having these things printed:

Q. Were you sworn before that grand jury by anybody? A. Yes, sir.

Q. Were you asked any question about this whiskey business? A. Yes, sir.

Q. Were you asked by one of the grand jurors whether you knew of any illicit whiskey being made in this city by any of those distilleries? A. No, sir.

Q. I ask you in regard to your answer to that, if you did not say you did not? A. I did not.

Q. What did you say? A. The question was not asked in that way.

Q. Well, wait until I ask you, and then you can tell. Were you not asked if you knew of any crookedness about whiskey, and didn't you reply "No"? A. No; I answered "Yes."

There is his testimony. He was afraid then that he was caught, and he was going to swear deliberately that he

swore before the grand jury, that he did know of crookedness. Then he changed his idea, and says afterward that it is about the one hundred and fifty barrels. He says now, "Put your question." Then I put this question — "Put your question." [Question repeated.] "A. The question was not put to me in that way."

Now, he gets out of it and says it was the one hundred and fifty barrels he talked about; but I asked him then if he was not asked if he did not know about any crookedness here and how he answered it, and he says that he answered it "Yes." That is, before he found out that it was necessary to change his answer or to change his mind upon that question. That is what he says. And it is utterly impossible, gentlemen, to get out of the fact that he did, before that grand jury, swear that he knew of no crookedness. You can not get out upon Mr. Roelle's testimony. You can not get out upon the idea that Schlichter put it in. Schlichter did not put it into the memory of the old man Samson. Schlichter did not write it in the memory of Mr. Hoag. Schlichter did not write it in the consciousness of Mr. Oleson. Schlichter did not write it in short-hand in the head of J. D. Ward. Schlichter, I tell you, by his short-hand necromancy, has not changed six or seven men into liars whether he put that in the second line from the top or not. He cannot do that with his short-hand, gentlemen. He could not make old Mr. Samson come here and say, "I asked that question myself; I thought that when he was there he was the head centre of all the rascality. And so just before he went out I put one of those general, pinching questions as to whether he knew anything. It was a kind of conscience scraper." The old man put that question just as these witnesses were going out: "Do you know anything about any fraud? Do you know anything about any crookedness?" It was a kind of a last question that would cover the case, and the old

man recollects that he put it to Jacob Rehm and he recollects why he put it to him, because he believed at that time that he was the head centre of the villainy. Mr. Hoag says the same thing. Mr. Hoag says that he looked upon him as the great rascal in the business; and he recollects distinctly that he asked him that question; and he recollects as distinctly how he answered it. J. D. Ward was the attorney of the United States, and he swears to it that he recollects it perfectly. Oleson was an attorney of the United States. He says that he recollects it perfectly. And yet is this all to be accounted for, gentlemen, by saying that Mr. Schlichter inserted it in his notes and that all these other gentlemen are mistaken? The fact is, gentlemen, that Mr. Rehm, when he was there, had not made up his mind to vomit; he had not yet made up his mind that he could make a bargain with the United States to get out of punishment. He did not know at that time that he need not go to the penitentiary if he would furnish a substitute. He did not know, gentlemen, at that time that he could have any understanding with anybody; if he would bring better blood than his they would deal lightly with him. He did not know at that time that two owls could be traded off for an eagle. He did not know at that time that two snakes could be traded off for a decent man. As soon as he found that out, then, instead of saying that he did not know anything about any crookedness; instead of saying that he did not know anything about any fraud, he said, gentlemen, "I know all about it. I know all of them; every one of them."

Now, gentlemen, I want you to put against that man's testimony the lies he swore to himself. I want you to put against that man's testimony the improbability that he would commit numberless crimes for nothing. I want you to put against that man's testimony the testimony of every one who has contradicted and disputed him. I want you

to put against that man's testimony the idea and the fact that he warned these other men against the approach of Munn. I want you to put against that man's testimony all the circumstances of the lies he has sworn; and I want you, in addition to that, to put against that man's testimony the evidence of this defendant.

You have been told by the district attorney—and if I have said anything too strong in the warmth of this discussion I beg his pardon. I have known Judge Bangs a long time, I have been his friend, I respect him; but I must say I felt a little outraged at what he said, because he said he had sympathy with this defendant. He got up here and said that the defendant bore a most excellent reputation. He got up and said that he sympathized with him, and all at once I saw his sympathy was a cloak under which he concealed a dagger to stab him. Now, then, he says good character is nothing. Good character is nothing! Good character, gentlemen, is not made in a day. It is the work of a life. The walls of that grand edifice called a good character have to be worked at during life. All the good deeds, all the good words, everything right and true and honest that he does, goes into this edifice, and it is domed and pinnacled with lofty aspirations and grand ambitions. It is not made in a day, neither can it be crumbled into blackened dust by a word from the putrid mouth of a perjurer. Let these snakes writhe and hiss about it. Let the bats fly in at its windows if they can. They cannot destroy it; but above them all rises the grand dome of a good character, not with the bats and snakes, but up, gentlemen, with eagles in the sunlight. They cannot prevail against a good character. Is it worth anything? If ever I am indicted for any offence and stand before a jury, I hope that I shall be able to prove as unsullied a reputation as Daniel W. Munn has proved. And when I read those letters, not only saying

that his character was good, but adding "above reproach," it thrilled me and I thought to myself then, "if ever you get in trouble will anybody certify as splendidly and as grandly to your reputation?" There is not a man of this jury that can prove a better reputation. There is not a judge on the bench in the United States that can prove a better reputation. There never was and there never will be an attorney at this bar that can prove a better reputation. There is not one in this audience that can prove a better reputation. And yet we are told that that splendid fabric called a good character cannot stand for a moment against a word from a gratuitous villain—not one moment.

Such, gentlemen, is not the law of this country. Such, gentlemen, never will be the law of this land or of any other. I deny it, and I hurl it back with scorn. A good character will stand against the testimony of all the thieves on earth. A good character, like a Gibraltar, will stand against the testimony of all the rascals in the universe, no matter how they assail it. It will stand, and it will stand firmer and grander the more it is assaulted. What is the use of doing honestly? What is the use of working and toiling? What is the use of taking care of your wife and your children? Where is the use, I say, of being honest in your business? What is the use of always paying your debts as you agree? What is the use of living for others? Character is made of duty and love and sympathy, and, above all, of living and working for others. What is the use of being true to principle? What is the use of taking a sublime stand in favor of the right with the world against you? What is the use of being true to yourself? What is the use, I say, if all this character, if all this noble action, if all this efflorescence of soul can be blasted and blown from the world simply by a word from the mouth of a confessed felon? And yet we are assured here in this august tribunal, in a Federal court of the United

States, where the defendant stands under the protection of the Constitution of his country, that his character is absolutely worthless.

They say, "Why don't you bring somebody to impeach Mr. Jacob Rehm?" Why? because he has impeached himself.

To impeach a man is the last method. If he tells an improbable story, that impeaches him. If he tells an unnatural story, that impeaches him. If you prove he has sworn a different way, that impeaches him. If you show he has stated a different way, that impeaches him. What is the use of impeaching him any more? That would be a waste of time.

Now, gentlemen, I say to you, and I say to you once for all, I want you to get out of your minds and out of your hearts any prejudice against this man on account of these times. I understand now that in every man's pathway hiss and writhe the serpents of suspicion. I understand now that every man in high place can be pointed at with the dirty finger of a scurvy rascal. I understand that. I understand that no matter how high his position is, that any man, no matter how low, how leprous he may be, what a cancerous heart he may have, he can point his finger at the man high up on the ladder of fame, and the man has to come down and explain to the wretched villain. I understand that; but these prejudices I want out of your mind. I want you to try this case according to the evidence and nothing else. I want you to say whether you believe the testimony of these conspirators and scoundrels. I want you to say whether you are going to take the testimony of that man, and if you bring in a verdict of guilty I want you to be able to defend yourselves when you go to the defendant and tell him: "We found you guilty upon a man's testimony who admitted that he was a thief; who admitted that he was a perjurer; who ad-

mitted that he hired others to swear lies, and who committed crimes without number year after year." I want you to say whether that is an excuse to give to him. Is it an excuse to give to his pallid, invalid wife? Is it an excuse to give to his father eighty years old, trembling upon the verge of the grave: "I sent your son to the penitentiary upon the evidence of a convicted thief"? I say is it an excuse to give to his weeping wife? Is it an excuse to give to his child: "I sent your father to the penitentiary upon the evidence of Jacob Rehm"? There is not one of you can go to the child, or to the sick wife, or to the old man, or to the defendant himself, and without the blush of shame say: "I sent you to the penitentiary upon the evidence of Jacob Rehm." You cannot do it. It is not in human nature to do it.

Now, gentlemen, there is one other thing I want to say. Suspicion is not evidence. Suspicious circumstances are not evidence. All the suspicion in the world, all the suspicious circumstances in the world, amount not to evidence. I want to say one more thing. They say that the testimony of a thief ought to be corroborated. By whom? another thief? No. Because that other thief wants corroboration, and that other thief would want corroboration, and so on until thieves ran out, which I think would be a long time in this particular community at this particular time. Understand that whatever one thief swears, that it is not corroborated because another thief swears to the same thing, and upon the point upon which Judge Doolittle dwelt so splendidly he must be corroborated upon the exact point. For instance, Mr. Munn went to his house, Mr. Munn went to his office, and another man says, I saw him there. That is not corroboration. He must be corroborated in the fact that he gave him the money, not that Munn went to his house—not that he had an opportunity to give him the money—not that he was there, but he

must be corroborated as to the exact, identical point that makes the guilt.

Now, gentlemen, I am going to leave this case with you. I feel a great interest in it. The defendant feels an infinite interest in it, infinite, I tell you. It is all he has on earth, all he has is with you. You are going to take his hopes; you are going to take his aspirations; you are going to take his ambition; you are going to take his family; you are going to take his child; you are going to take everything he has in this world into your power. It is a fearful thing to take this responsibility. I know it. But you are going to take it—his future, everything he has dreamed and hoped for, everything that he has expected to attain—his character, everything he has that is dear to him, and you are going to say "Not guilty," or you are going to cover him with the mantle of infamy and shame forever; you are going to disgrace his blood; you are going to bring those that love him down with sorrow to their graves; you are either going to do that or you are going to say, "We will not believe the testimony of self-convicted robbers and thieves." And, gentlemen, I ask you, I implore you, I beseech you, more than that, I demand of you that you find in this case a verdict of "Not guilty." Put yourself in his place. Do you want to be convicted on that kind of testimony? Do you want to go to the penitentiary with that kind of witnesses against you? Do you want to be locked up on that kind of testimony? Do you want to be separated from your wife or your child on that kind of evidence? Do you want to be rendered infamous during your life upon the testimony of such men as Golsen and Conklin and Rehm? Do you? Do you? Do you? Does any man in the world imagine that twelve honest men can be found that can rob another of his citizenship, of his honor, of his character, of his home, and of his entire fortune, simply upon the testimony

of such scoundrels? No, gentlemen. For myself, for this defendant, I have no fear. All I ask is that you will give to this evidence the weight that it deserves. All I ask of the prosecuting attorney in this case is that he do his duty. All I ask of him is to state just as nearly as he can, as I have no doubt he will, the evidence in the case. All I ask of him is that he give to all these circumstances their due weight, and no more. I ask him to fight for justice and not for his reputation. I ask him to fight for the honor of the Government. I ask him to fight for the complete doing of justice, if he can, but I hope he will leave out of the case all idea that he must win a case or that I must lose a case. We are contending for too great a stake. Personally, I care nothing about it, whether I make or lose what you please to call reputation in this affair. I care everything for my client. I care everything for his honor, and more than that, gentlemen, I love the United States of America. I love this Government, I love this form of government, and I do not want to see the sources of government poisoned. I do not want to see a state of things in the United States of America whereby a man can be consigned to a dungeon upon the testimony of a robber and thief, simply upon a political issue, simply by the testimony of some man who wishes to purchase immunity at the price of another's liberty and honor.

One more point, and I have done. I had forgotten it, or I should have mentioned it before. They have appealed to you all along to say that the fact that highwines were so cheap during all this time put Mr. Munn upon his information, so to speak, that there were frauds. Let me take those books and let us see. On the 6th day of June, 1874, the tax on spirits was seventy cents, and the price was ninety-four cents. That made them get twenty-four cents a gallon for the whiskey. Understand, the tax was seventy, the price was ninety-four. That made them get

twenty-four cents for the whiskey. Now, then, on the 10th of June it was ninety-six and a half cents. That made twenty-six and a half for the whiskey. On the 10th of June, 1874, twenty-six and a half they got for the whiskey. February 11, 1874, ninety-six cents, which made twenty-six cents; and so it went on in that way, until what? Until the tax was raised from seventy cents to ninety cents, and what is it now? The tax on whiskey, gentlemen, is ninety cents, and the price on the 10th day of May, 1876, is one dollar and seven cents; so that the price of whiskey now is only seventeen cents above the tax, and at the time that Mr. Munn ought to have known that everybody was a thief and rascal, the price was twenty-six cents above the tax, ten cents more than now. From these figures, gentlemen, you will see it, and how high did it go? The day Mr. Munn was turned out of office—gentlemen, on the tenth day of May, 1875,—the tax then being ninety cents, whiskey was worth one dollar and fifteen cents. The day he was turned out. It was nine cents more than it is to-day. You are welcome to all you can make out of that argument. It was worth nine cents more a gallon above the tax the day he was turned out than it is to-day, and if Mr. Munn was bound to take judicial notice that there was nothing but frauds in the district, and every distillery was running crooked, I say that the officers of the Government are bound to take that notice to-day, and you must recollect, gentlemen, that it was admitted in this case that there were frauds all over the country, that there were distilleries running in St. Louis, in San Francisco, in Milwaukee, in Peoria or Pekin, in Peoria, I believe, in my town, not a sound has been heard, and not a solitary man, I believe, charged with fraud—in St. Louis, in Louisville, in Cincinnati, in all these towns. Now, where was the whiskey being made that was crooked? Nobody could tell. If there was a vast amount being made in Cincinnati it would

lessen the price in Chicago, no matter whether the Chicago distillers were running honestly or not. If there was a vast amount being made in St. Louis it would lessen the price, no matter whether the other distilleries were running honestly or not, conseqently it was impossible for the supervisor to tell it.

There is another thing I forgot. During all the time Jacob Rehm was doing this gratuitous rascality he was one of the bondsmen on the official bond of Hoyt. He was not only helping Hoyt steal and giving him all the money, but he was making himself responsible for the money he stole, and he did not charge any commission on it. He did not charge for any shrinkage or shortage or anything in the world, but made himself liable for the uttermost farthing. He was on the bond of Collector Irwin, called the stamp bond, and so do not forget that he did not only not take any money, but he went on the acknowledgments of the thieves that stole it. He not only did not take any himself, but he made himself liable as a bondsman for what he gave to them. Do not forget these things.

Now, gentlemen, I believe I have said about all I wish to say to you; the rest is for you. You must take the case, and, as I said, you do not want to go off on any prejudice against the kind or the character of the case. You do not want to go off on the idea that the air is full of rascality because some of us are to be tried next. We don't know. Let us try this case fairly and squarely on the evidence, and the next time I meet you, gentlemen, every one of you will be glad that you found this defendant not guilty, as you cannot avoid doing.

[The Jury rendered a verdict of "Not Guilty."]

# CLOSING ADDRESS IN FIRST STAR ROUTE TRIAL.

## Closing Address to the Jury in the First Star Route Trial.*

MAY it please the Court and gentlemen of the jury: Let us understand each other at the very threshold. For one I am as much opposed to official dishonesty as any man in this world. The taxes in this country are paid by labor and by industry, and they should be collected and disbursed by integrity. The man that is untrue to his official oath, the man that is untrue to the position the people have honored him with, ought to be punished. I have not one word to say in defence of any man who I believe has robbed the Treasury of the United States. I want it understood in the first place that we are not defending; that we are not excusing; that we are not endeavoring to palliate in the slightest degree dishonesty in any Government official. I will go still further: I will not defend any citizen who has committed what I believe to be a fraud upon the Treasury of this Government. Let us understand each other at the commencement.

You have been told that we are a demoralized people; that the tide of dishonesty is rising ready to sweep from

* The most characteristic feature of the Star-route trial, which has been the central point of interest in our city for the past three months, was the marvelously powerful speech of Colonel Robert G. Ingersoll before the jury and the judge last week.

People who knew this gifted gentleman only superficially, had supposed that he was merely superficial as a lawyer. While acknowledging his remarkable ability as an orator and his vast accomplishments as a speaker, they doubted the depth of his power. They heard him, and the doubt ceased. It can be said of Ingersoll, as was written of Castelar, that his eloquent utterances are as the finely-fashioned ornamental designs upon the Damascus blade—the blade cuts as keenly and the embellishments beautify without retarding its power.

The following is Colonel Ingersoll's speech. Its swift incisiveness, keen and comprehensive logic and apt deductions from proper premises are only equaled by the grand manner of its delivery, and under the circumstances incidental to the case and the routes to be traversed, by its expedition of action and brevity.—Washington, D. C., *The Capital*, Sept. 16th, 1882.

one shore of our country to the other. You have been appealed to to find innocent men guilty in order that that tide may be successfully resisted. You have been told—and I have heard the story a thousand times—that this country was demoralized by what the gentlemen are pleased to call the war, and that owing to the demoralization of the war it is necessary to make an example of somebody that the country may take finally the road to honesty. We were in a war lasting four years, but I take this occasion to deny that that war demoralized the people of the United States. Whoever fights for the right, or whoever fights for what he believes to be right, does not demoralize himself. He ennobles himself. The war through which we passed did not demoralize the people. It was not a demoralization; it was a reformation. It was a period of moral enthusiasm, during which the people of the United States became a thousand times grander and nobler than they had ever been before. The effect of that war has been good, and only good. We were not demoralized by it. When we broke the shackles from four millions of men, women and children it did not demoralize us. When we changed the hut of the slave into the castle of the freeman it did not demoralize us. When we put the protecting arm of the law about that hut and the flag of this nation above it, it was not very demoralizing. When we stopped stealing babes the country did not suddenly become corrupted. That war was the noblest affirmation of humanity in the history of this world. We are a greater people, we are a grander people, than we were before that war. That war repealed statutes that had been made by robbery and theft. It made this country the home of MAN. We were not demoralized.

There is another thing you have been told in order that you might find somebody guilty. You have been told that our country is distinguished among the nations of the

world only for corruption. That is what you have been told. I care not who said it first. It makes no difference to me that it was quoted from a Republican Senator. I deny it. This country is not distinguished for corruption. No true patriot believes it. This country is distinguished for something else. The credit of the United States is perfect. Its bonds are the highest in the world. Its promise is absolute pure gold. Is that the result of being distinguished for corruption? I have heard that nonsense, that intellectual rot all my life, that the people used to be honest, but at present they are exceedingly bad. It is the capital stock of every prosecuting lawyer; but in it there is not one word of truth. Is this country distinguished only for its corruption throughout Europe? No. It is respected by every prince and by every king; it is loved by every peasant. Is it because we have such a reputation for corruption that a million people from foreign lands sought homes under our flag last year? Is corruption all we are distinguished for? Is it because we are a nation of rascals that the word America sheds light in every hut and in every tenement in Europe? Is it because we are distinguished for corruption that that one word, America, is the dawn of a career to every poor man in the Old World? I always supposed that we were distinguished for free schools, for free speech, for just laws; not for corruption. A country covered with schoolhouses, where the children of the poor are put upon an exact equality with those of the rich, is not distinguished for corruption. And yet in the name of this universal corruption you are appealed to to become also corrupt. This nation is substantially a hundred years old, and to-day the assessed property of the United States is valued at $50,000,000,000. Is that the result of corruption, or is it the result of labor, of integrity and of virtue? I deny that my country is distinguished for corruption. I assert that it rises above the

other nations distinguished for humanity as high as Chimborazo above the plains. Never will I put a stain upon the forehead of my country in order that I may win some case, and in order that I may consign some honest man to the penitentiary. I stand here to deny that this is a corrupt country. Let me say that the only tribute that I ever heard paid to corruption was indirectly paid by Mr. Merrick himself. He told you that official corruption destroyed the French Empire, and upon the ruins of that empire arose the French Republic. He makes official corruption the father of French liberty. If it works that way I hope they will have it in every monarchy on the globe. Napoleon stole something besides money; he stole liberty, and the French people finally got to that condition of mind where they preferred to be trampled on by Germany rather than to have their liberty devoured by Napoleon. From that splendid sentiment sprang the French Republic. This country is the land not of slavery, but of liberty, not of unpaid toil, but of successful industry. There is not a poor man to-day in all Europe or a poor boy who does not think about America. I recollect one time in Ireland that I met with a little fellow about ten years old with a couple of rags for pantaloons and a string for a suspender. I said, "My little man, what are you going to do when you grow up?" "*Going to America.*" It is the dream of every peasant in Germany. He will go to America; not because it is the land of corruption, but because it is the land of plenty, the land of free schools, the land where humanity is respected.

There is another thing about this country. We have a king here, and that king is the law. That king is the legally expressed will of a majority, and that law is your sovereign and mine. You have no right to violate one law to carry out another. We all stand equal before that law, and the law must be upheld as an entirety, and in no other

way. If in this case you believe these defendants beyond a doubt to be guilty, it is your duty to find them so, and you must find them so in order to preserve your own respect. I do not agree with this prosecution in the idea that the perpetuity of the Republic depends upon this verdict. Decide as badly as you please, as horribly as you can, the Republic will stand. The Republic will stand in spite of this verdict, and the Republic will stand until people lose confidence in verdicts—until they lose confidence in legal redress. When the time comes that we have no confidence in courts and no confidence in juries, then the great temple will lean to its fall, and not until then. As long as we can get redress in the courts, as long as the laws shall be honestly administered, as long as honesty and intelligence sit upon the bench, as long as intelligence sits in the chairs of jurors, this country will stand, the law will be enforced and the law will be respected. But so far as my clients are concerned, everything they have, everything they love, everything for which they hope, home, friends, wife, children, and that priceless something called reputation, without which a man is simply living clay, everything they have is at stake, and everything depends upon your verdict. I want you to understand that everything depends upon your decision, and yet my clients with their world at stake, home, everything, *everything*, ask only at your hands the mercy of an honest verdict according to the evidence and according to the law. That is all we ask, and that we expect. By an honest verdict I mean a verdict in accordance with the testimony and in accordance with the law, a verdict that is a true and honest transcript of each juror's mind, a verdict that is the honest result of this evidence. Whoever takes into consideration the desire, or the supposed desire, of the outside public is bribed. Whoever finds a verdict to please power, whoever violates his conscience that he may be in accord, or in sup-

posed accord, with an administration or with the Government, is bribed. Whoever finds a verdict that he may increase his own reputation is bribed. Whoever finds a verdict for fear he will lose his reputation is bribed. Whoever bends to the public judgment, whoever bows before the public press, is bribed.

Fear, prejudice, malice, and the love of approbation bribe a thousand men where gold bribes one. An honest verdict is the result not of fear, but of courage; not of prejudice, but of candor; not of malice, but of kindness. Above all, it is the result of a love of justice. Allow me to say right here that I believe every solitary man on this jury wishes to give a verdict exactly in accordance with this testimony and exactly in accordance with the law. Every man on this jury wishes to preserve his own manhood. Every man on this jury wishes to give an honest verdict. There are no words sufficiently base to describe a man who will knowingly give a dishonest verdict. I believe every man upon this jury to be absolutely honest in this case. The mind of every juror, like the needle to the pole, should be governed simply by the evidence. That needle is not disturbed by wind or wave, and the mind of the honest juror never should be disturbed by clamor, nor by prejudice, nor by suspicion. Your minds should not be affected by the fume, by the froth, by the fiction, or by the fury of this prosecution. You should pay attention simply to the evidence, and to use the language of one of my clients, you should be governed by the frozen facts. That is all you have any right to think of and all you have any right to examine.

Having now said thus much about the duties of jurors, let me say one word about the duties of lawyers. I believe it is the duty of a lawyer, no matter whether prosecuting or defending, to make the testimony as clear as he can. If there is anything contradictory it is his business if he

possibly can to make it clear. If there is any question of law about which there is a doubt, it is his right and it is his duty to give to the court the result of his study and of his thoughts, for the purpose of enlightening the court upon that particular branch of law. No matter if he may believe the court understands it, if there is the slightest fear that the court does not or has forgotten it, it is his duty to bring the attention of the court to that law. It is not his duty to abuse anybody. It is not my duty to abuse anybody. There is no logic in abuse; not the slightest; and when a lawyer, under the pretext of explaining the evidence to the jury, calls a defendant a thief and a robber, he steps beyond the line of duty and, in my judgment, beyond the line of his privilege. What light does that throw upon the case? In his effort to explain the law to the court what cloud does it remove from the intellectual horizon of his honor for the attorney to call the defendant a robber, a thief, or a pickpocket? I shall in this case give you what I believe to be the facts. I shall call your attention to the testimony. I shall endeavor to throw what light I am capable of throwing upon this entire question. I shall not deal in personalities. They are beneath me. I shall not deal in epithets. Nobody worth convincing can be convinced in that way. Now, let us see what the law is, and let us see what our facts are. In the beginning of this dusty branch I shall ask the pardon of every juror in advance for going over these facts once again. You see they strike every man in a peculiar way. No two minds are exactly alike. No pair of eyes distinguish exactly the same object or the same peculiarities of the objects. This is an indictment under section 5440 of the Revised Statutes, and there must not only be a conspiracy to defraud, but there must be an overt act done in pursuance of that conspiracy for the purpose of effecting the object of it. Now, then, how must these overt acts be stated in this indict-

ment? Is the overt act a part of the crime, and must it be described with the same particularity that you describe the offence? Which of the overt acts set out in this indictment is the overt act depended upon, together with the act of conspiring, to make this offence? I hold, may it please your Honor, that every overt act set out in the indictment must be proved exactly as it is alleged, no matter whether the description was necessary to be put in the indictment or not. No matter how foolish, how unnecessary the description, it must be substantiated, and it must be proven precisely as it is charged. No matter whether the particular thing described is of importance or not, no matter how infinitely unnecessary it was to speak of it, still, if it is a matter of description, it must be proven precisely as it is charged. Upon that subject I wish to call the attention of the Court to some authorities, and it will take me but a few moments. I will call the attention of the Court first to the case of the State against Noble, 15 Maine, 476. Here a man was indicted for fraudulently and willfully taking from the river and converting to his own use certain logs. These logs were described as marked "W" with a cross, and "H" with another cross, and with a girdle. Now, it seems that a part of this mark was not found, according to the testimony upon the logs taken:

"The description of these logs in the indictment is the only way the logs could be distinguished and could not be rejected as surplusage. It has been settled that if a man be indicted for stealing a black horse, and the evidence be that he stole a white one, he cannot be convicted. The description of a log by the mark is more essential than that of a horse by its color. If it was not necessary to describe the log so particularly by the mark, yet so having stated it, there can be no conviction without proof of it."

Now, the court, in deciding this, says:

"It may be regarded as a general rule, both in criminal prosecutions and in civil actions, that an unnecessary averment may be rejected where enough remains to show that an offence has been committed, or that a cause of action exists. In Ricketts *vs.* Solway, 2 Barn., & Ald., 360, Abbott, C. J., says: 'There is one exception,

however, to this rule, which is, where the allegation contains matter of description. Then, if the proof given be different from the statement, the variance is fatal.' As an illustration of this exception, Starkie puts the case of a man charged with stealing a black horse. The allegation of color is unnecessary, yet as it is descriptive of that, which is the subject-matter of the charge, it cannot be rejected as surplusage, and the man convicted of stealing a white horse. The color is not essential to the offence of larceny, but it is made material to fix the identity of that, which the accused is charged with stealing. 3 Stark., 1531.

"In the case before us the subject-matter is a pine log marked in a particular manner described. The marks determine the identity, and are, therefore, matter purely of description. It would not be easy to adduce a stronger case of this character. It might have been sufficient to have stated that the defendant took a log merely, in the words of the statute. But under the charge of taking a pine log we are quite clear that the defendant could not be convicted of taking an oak or a birch log. The offence would be the same; but the charge to which the party was called to answer, and which it was incumbent on him to meet, is for taking a log of an entirely different description. The kind of timber and the artificial marks by which it was distinguished are descriptive parts of the subject-matter of the charge which cannot be disregarded, although they may have been unnecessarily introduced. The log proved to have been taken was a different one from that charged in the indictment; and the defendant could be legally called upon to answer only for taking the log there described. In our judgment, therefore, the jury were erroneously instructed that the marks might be rejected as surplusage; and the exceptions are accordingly sustained."

I also cite the case of the State against Clark, 3 Foster, New Hampshire, 429:

"Indictment for fraudulently altering the assignment of a mortgage. The indictment set forth the mortgage, and also the assignment, as it was alleged to have been originally made from Miles Burnham to Noah Clark, the respondent; and alleged that the assignment was signed, sealed, delivered, witnessed by two witnesses, and duly and legally recorded at length, in the registry of deeds of Rockingham county, on the 18th of September, 1844. It then alleged that this assignment was fraudulently altered on the 28th of June, 1844, by inserting the letter 'S' in two places, between the words 'Noah' and 'Clark,' so that the assignment originally made to Noah Clark, after the alteration appeared as if it were made to Noah S. Clark.

"On trial the records of deeds were produced, and there was found

a record of the assignment purporting to be made to Noah S. Clark, the record bearing date September 18, 1844, but there was no record of any assignment to Noah Clark. The respondent's counsel objected that this evidence did not support the allegations of the indictment. The forgery was alleged to have been committed on the 28th of June, 1844, and the court admitted evidence that Miles Burnham, who executed the assignment, being applied to about the 30th of July, 1846, for a loan of money upon a mortgage of the same property, declined to make the loan unless he was satisfied there was no mortgage of conveyance of the land by Noah Clark, and the person who drew the assignment searched the records with Burnham, and found no such deed on record. This evidence was objected to, but was understood to be introductory to other material and pertinent evidence, and was therefore admitted; but no such other evidence, to which it was introductory, was offered.

"The jury found a verdict of guilty, which the defendant moved to set aside."

Upon that the court says:

"We are not able to look upon this statement that the deed was duly recorded as well as witnessed and acknowledged according to the statute, in any other light than as part of the description of the deed and conveyance which the defendant was charged with altering. We are, therefore, of opinion that the evidence upon this point did not sustain the indictment."

Now, if the statement that the mortgage was recorded was such a material part of the description that a failure to prove the record as charged was fatal, so, I say, in these overt acts, if they charge that a thing was done or a paper filed on a certain day and it turns out not to be so, that is a fatal variance, and under that description in the indictment the charge cannot be substantiated. I refer to the case against Northumberland, 46 New Hampshire, 158, and also to the King against Wennard, 6 Carrington & Paine, 586.

Clark *vs.* Commonwealth, 16 B., Monroe, 213:

"The doctrine seems to have been well settled in England and this country, that in criminal cases, although words merely formal in their character may be treated as surplusage and rejected as such, a descriptive averment in an indictment must be proved as laid, and no allegation, whether it be necessary or unnecessary, more or less particular, which is descriptive of the identity of what is legally

essential to the charge in the indictment, can be rejected as surplusage."

And in this case I cite Dorsett's case, 5th Roger's Record, 77:

"On an indictment for coining there was an alleged possession of a die made of iron and steel, when, in fact, it was made of zinc and antimony. The variance was deemed fatal."

And yet it was not necessary to state of what the die was made. If the indictment had simply said he had in his possession this die, it would have been enough, but the pleader went on and described it, saying it was made of iron and steel. It turned out upon the trial that it was made of zinc and antimony, and the variance was held to be fatal. So I cite the court to Wharton's American Crim. Law, 3rd edition, page 291, and to Roscoe on Criminal Evidence, 151. Now I cite the case of the United States against Foye, 1st Curtis's Circuit Court Reports, 368, and I do not think it will be easy to find a case going any further than this. It goes to the end of the road:

"A letter containing money deposited in the mail for the purpose of ascertaining whether its contents were stolen on a particular route and actually sent on a post-route, is a letter intended to be sent by post within the meaning of the post-office act."

This I understand was a decoy letter.

"The description of the termini between which the letter was intended to be sent by post cannot be rejected as surplusage, but must be proved as laid."

Upon that the court says:

"But a far more difficult question arises under the other part of the objection. The indictment alleges, not only that this letter was intended to be conveyed by post, but describes where it was to be conveyed; it fixes the termini as Georgetown and Ipswich. The allegation is, in substance, that the letter was intended to be conveyed by post from Georgetown to Ipswich. The question is, whether the words from Georgetown to Ipswich can be treated as surplusage. It was necessary to allege that the letter was intended to be conveyed by post. The words from Georgetown to Ipswich are descriptive of this intent. They describe, more particularly, that intent which it was necessary to allege. In United States *vs.* Howard, 3 Sumner, 15, Mr. Justice Story lays down the following rule, which we consider

to be correct: 'No allegation, whether it be necessary or unnecessary, whether it be more or less particular, which is descriptive of the identity of that which is legally essential to the charge in the indictment, can ever be rejected as surplusage.' Apply that rule to this case. It is legally essential to the charge to allege some intent to have the letter conveyed somewhere by post. Suppose the indictment had alleged an intent to have it conveyed between two places where no post-office existed, and over a post-route where no post-road was established by law. Inasmuch as the court must take notice of the laws establishing post-offices and post-roads, the indictment would then have been bad; because this necessary allegation would, on its face, have been false. Words, therefore, which describe the termini and the route, and thus show what in particular was intended, do identify the intent, and show it to be such an intent as was capable, in point of law, of existing.

"And we are obliged to conclude that they cannot be treated as surplusage, and must be proved, substantially, as laid. We are of opinion, therefore, that there was a variance between the indictment and the proof; and that, for this cause, a new trial should be granted."

So I refer to the State *vs.* Langley, 34th New Hampshire, 530.

The COURT. I think, Colonel Ingersoll, there is no doubt about this doctrine.

Mr. INGERSOLL. I do not want any doubt about it.

The COURT. There cannot be.

Mr. INGERSOLL. Well, I will just read this because I do not want any doubt about it in anybody's mind.

The COURT. I have no doubt about it.

Mr. INGERSOLL. Very well:

"If a recovery is to be had, it must be *secundum allegata et probata;* and the rule is one of entire inflexibility in respect to all such descriptive averments of material matters. The cases upon this point, many of which are collected in the case of State *vs.* Copp, 15 N. H., 215, are quite uniform."

Now, if the Court please, I not only read this with regard to the overt acts, but with regard to the description of the crime itself—the conspiracy. I will then refer to State against Copp, 15th New Hampshire. I will also refer to the case of Rex against Whelpley, 4th Carrington & Payne, 132; to 3d Starkie on Evidence, sections 1542 to

1544, inclusive; also to the United States against Denee and others, 3d Wood, page 48, and a case under this exact section, 5440:

"It seems clear that the statute upon which this indictment is based is not intended to relieve the pleader from any supposed necessity of setting out the means agreed upon to carry out the conspiracy by requiring him to aver some overt act done in pursuance of the conspiracy and make such act a necessary ingredient of the offence."

The court then refers to the Commonwealth against Shed, 7th Cushing, 514, and continues—in that case it was different:

"That difficulty does not exist here, for the overt act is part of the offence, and must be proved as laid in the indictment."

So I find that the court passed upon this very question, and I wish to call the attention of the Court again to one line on page 961 of the record in this case:

"But in all cases the principle is simply this: That where the act which was done in pursuance of the conspiracy is described in the indictment it must be described with accuracy and completeness, and if there is a variance in the proof it is fatal to the prosecution."

When I come to that part as to the necessity of describing offences then I will cite the Court to some other authorities in connection with these.

Now, then, we have got it established, gentlemen of the jury. There is no longer any doubt about that law, and the Court will so instruct you, that wherever they set out in the indictment that we did a certain thing in pursuance of the conspiracy, they must prove that thing precisely as charged, no matter whether the description was necessary or unnecessary. They must prove precisely as they state. They wrote the indictment, and they wrote it knowing they must prove it, and if they wrote it badly it is not the business of this jury to help them out of that dilemma.

Now, as I say, we come to the dust and ashes of this case, the overt acts, and I take up these routes precisely in the order in which they were proved by the prosecution.

First. I take up route 34149. Now, let us see where we

are. The first charge is that we filed false and altered petitions by Peck, Miner, Vaile, and Rerdell. When did we file them? The indictment charges that we filed them on the 10th day of July, 1879. When did the evidence show they were filed? On the 3d day of April, 1878. That is a fatal variance, and that is the end eternal, everlasting, of that overt act. Without taking into consideration the fact that every petition was true and genuine, the petitions were not sent by the persons as charged. It was presented by Senator Saunders, and that is the absolute end of that overt act, and you have no right to take it into consideration any more than if nothing had been said upon the subject.

Second. That on the 10th of July a false oath was placed upon the records. Now, that is an overt act, and you know as well as I do that the description of that must be perfect. If they say it is of one date and the evidence shows that it is of another, it is of no use. It is gone. They say, then, that a false oath was filed. When? On the 10th day of July. Suppose the oath to have been false. When was it filed? The evidence says April 3, 1879. That is the end of the false oath, no matter whether that oath is good or bad. No matter whether they committed perjury or wrote it with perfect and absolute honesty, it is utterly and entirely worthless as an overt act.

Third. An order for expedition July 10, 1879, alleged to have been made by Brady. As a matter of fact the order was signed by French. There is a misdescription. No matter if Brady told him to sign it, it was not as a matter of fact signed by Brady—it was signed by French. They described it as an order signed by Brady. It is an order signed by French, and the misdescription of variance is absolutely fatal, and you have no more right to consider it than you have the decree of some empire long since vanished from the earth. Now, this is all the evidence on this

route. That is all of it with the exception of who received the money, and I will come to that after awhile. That is route 34149.

According to their statement in the indictment, holding them by that, there is not the slightest testimony. We can consider that route out. We have only eighteen now to look after. That is the end of that. It has not a solitary prop; upon the roof of that route not a shingle is left—not one.

Let us take the next route, 38135. What do we do in that according to the indictment? And now, gentlemen, recollect, they wrote this indictment. You would think we did, but we didn't. They wrote it, and they are bound by it. But if I had been employed on behalf of the defendants to write it I should have written it just in that way.

First. Sending and filing a false oath. When did we send it; when did we file it? On the 26th day of June. That is what the indictment says. What does the evidence say? April 18, 1879. Now, that is the end of that. It was a true oath, but that does not make any difference. That oath is gone. That has been sworn out of the case, and dated out of the case. What is the next?

Second. Filing false petitions. When did we file them? The 26th day of June, 1879. The last petition was filed the 8th of May, 1879, and it does not make one particle of difference whether these dates were before or after the conspiracy as set forth, but as a matter of fact, every one of the petitions was true. That charge is gone. A fatal variance. What is the next fraudulent order? That of June 20. There was never the slightest evidence introduced to show that it was a fraudulent order—not the slightest. And what is the next charge? Fraudulently filing a subcontract. And right here I stop to ask the Court, of course not expecting an answer now, but in

the charge to the jury, is it possible to defraud the Government of the United States by filing a subcontract?

Now, gentlemen, I want you to think of it. How would you go to work to defraud the Government by filing a subcontract? If the subcontract provides for a greater amount of pay than the Government is giving the original contractor, the Government will not pay it; it will only pay up to the amount that it agreed to pay the contractor. It is like A giving an order on B to pay C what A owes B. He need not pay him any more. That is all. And if the ingenuity of malice can think of a way by which the Government could be defrauded by the filing of a subcontract I will abandon the case. It is an impossible, absurd charge, something that never happened and never will happen. Well, that is the end of this route with one exception. This is the Agate route. This is the route where thirty dollars it is claimed has been taken from the Government. It is that route. You remember the productiveness of that post-office. They established an office and nobody found it out except the fellow that was postmaster, and in his lonely grandeur I think he remained about eighteen months and never sold a stamp. That is all that is left in that route, that order putting Agate upon the route and taking it off, and then giving one month's extra pay. That is all—another child washed—38135—that is all there is to that route; no evidence except epithets, no testimony except abuse. If anything is left under that it is simply "robber, thief, pickpocket." That is all.

Now we come to another route, and I again beg pardon for calling attention to these little things. The Government has forced us to do it. It is like a lawsuit among neighbors. Each is so anxious to beat the other they begin to charge for things that they never dreamed of at the time they were delivered. They will charge for neighborly acts, time lost in attending the funeral of members of each

other's family before they get through the lawsuit. So the Government started out in this case, and not finding a great point had to put in little ones, and we have to answer the kind of points they make.

41119. Overt acts. First. Filing a false oath. When did we file it? The 25th day of June, the indictment says. Who filed it? Peck and Miner. Well, when was it filed or when was it transmitted? According to their story, June 23, 1879. This oath is marked 8 C, and an effort was made to prove by a man by the name of Blois that it was a forgery. That was objected to, first, that it was not charged to be forged in the indictment; and second, that a notary public had already sworn that it was genuine, and that he could not be impeached in that way, and thereupon that oath was withdrawn, and you will never hear of it any more. I do not know whether it is true or not. That is found on record, page 1469. Now, recollect that oath was withdrawn. That is the end of it.

Second. Filing false petitions. When were they filed? July 8, 1879, and it turned out that that charge was true, with two exceptions: First, that they were not filed at that time; and, second, that all the petitions were true. That is the only harm about that charge.

Third. A fraudulent order made by Brady, July 8th. Now let us see what the fraud consists in. The fraud is claimed to be in expediting to thirty-three hours when the petition only called for forty-eight. You remember the charge expediting to thirty-three hours, when the petition only called for forty-eight. Now, let us see. It is claimed that to grant more than the petitions ask is a crime; certainly it must be admitted that to grant less is equally a crime. The only evidence now of fraud in this is that he was asked to expedite the forty-eight hours, but he expedited to thirty-three. That is to say, he violated the petitions, and if that is good doctrine, then the petitions

must settle whether expedition is to be granted or not. If that is good doctrine there is no appeal from the petition. I do not believe that doctrine, gentlemen. I believe it is the business of the Post-Office Department to grant all the facilities to the people of the United States that the people need. He must get his information from the people, and from the representatives of the people; and while he is not bound to give all they ask, if he does give what the people want, and what their representatives indorse, you cannot twist or torture it into a crime. That is what I insist. Now, the only charge is here, and while they ask for forty-eight hours he gave thirty-three. That is the only crime. Did he pay too much for it? There is no evidence of it. Before I get through I will show you that there is no evidence that he ever paid a dollar too much for any service whatever.

Now, then, if the doctrine contended for by the Government is correct, then a petition is the standard of duty and the warrant of action, and if they gain upon this route they lose upon every other route. Let us examine. There are three charges. First, false petitions. They were all true. Second, false oaths. They offered to prove it, and then withdrew it. Third, that while the petitions called for forty-eight hours he granted thirty-three, and before you can find that that was fraudulent you must understand the precise connections that this mail made with all others, and it was incumbent upon them to prove, not an inference, but a fact, that there was not only reason, but reason in money—sound reason for expediting it instead of forty-eight to thirty-three. That is the end of that route. There is not a jury on earth, let it be summoned by prejudice and presided over by ignorance, that would find a verdict of guilty upon the testimony in that route. It is impossible. Another child gone.

44155. Let us see what we get there, and I have not got

to my client yet. First, filing false petitions, by Peck, Miner, Vaile and Rerdell. When? On the 27th of June, 1879. Were they false? Let us see. Mr. Bliss, speaking of these petitions contained in a jacket held in his hand, dated the 29th of June, 1879, record, page 687, said: "We do not attack the genuineness of these petitions." That is the end of that. So much for that.

Second. A fraudulent order increasing service, and yet all the petitions are admitted to be genuine, and the order was in accordance with the petitions on the route. Before the order was fraudulent because it was not in accordance with the petitions, and in this route it is a fraud because it is in accordance with the petitions. Now, just take it. Here is the route. Every petition is genuine, the oath is true, not a petition attacked, the order in accordance therewith, and the only evidence that the order is a fraud is that it was in accordance with genuine petitions recommended by the people and by the representatives of the people. That is all.

Let me tell you another thing. Expedition had been granted on the route long before, and this was simply an increase of trips, and no charge was made that the order granting the expedition ever was a fraud.

Third. Another fraudulent order by Brady, of April 17, 1880, and it turns out that this order was in fact made by French. That was the only evidence that it was fraudulent, but the mere fact that French made it takes it out of this case, and you have no more right to consider it than you would an order made in the Treasury Department. The only objection to this order now is what? That it was in violation of the petitions. How? That it took off one or two of the trips. That was the fraud of the order of April 17, 1880. The fraud consisted in taking off two or three trips that had been put on.

Now, let us see. The next fraudulent order was July

16, 1880. What was that for? For putting the service back precisely as it was. Now, I want you, gentlemen, to understand that, every one of you. Here is a charge in the indictment of a fraudulent order that took off, say, two trips from the service. That is a fraud they say. Then the next order put those two trips back, and that they say is another fraud. It would have been very hard to have made an order in that case to have satisfied the Government; it was an order to decrease it; it was an order to put it back where it was; that is, it was a fraud, consequently it was a fraud to do anything about it. That is all there is in that case.

Let us boil it down. False petitions. That is the charge. The evidence is that the petitions are all true. A false oath is the charge. The evidence is that the oath is true. A fraudulent order decreasing the service, another fraudulent order increasing the service, that is, leaving it just where he found it. In other words, according to this indictment, Brady committed a fraud in reducing the trips, and another fraud by putting the trips back. I think it was only one trip that he reduced. Now, that is all there is in that case. People may talk about it one day or one year. That is all there is, and that is nothing.

38145. Fraudulently filing what? A subcontract with J. L. Sanderson. I say you cannot fraudulently file a subcontract against the Government. It is an impossibility. Besides all that, Mr. Sanderson filed his own subcontract. There is no evidence that anybody else did file it or present it for filing. It was not our contract; it was Sanderson's subcontract. How comes that in his indictment? Let me tell you. In the first indictment they had Sanderson; and when they copied that first indictment, with certain variations to make this, they forgot this part and put in the fraudulent filing of Sanderson's contract. It never should have been in this case. It has not the slightest relation-

ship. The real charge of fraud in this route is that a retrospective order was made, and this order bore date February 26, 1881, and was retrospective in this: that it was to take effect from the 15th of January, 1881; but understand me, this was Sanderson's route. He received that money, and it has nothing to do with us. Still I will answer it. That retrospective order gave pay from the 15th of January, 1881. Now, it seems that before the order of February 26, an order had been made by telegraph, dated 15th of January, 1881, to Sanderson, and this telegraphic order was for daily service on eighty-nine miles. The jacket order of February 26, 1881, was for daily service on the whole route from January 15, 1881. If that order had been carried out he would have received pay for daily service on the whole route, instead of for daily service on the eighty-nine miles to which he was entitled. It turned out that the order of February 26, 1881, was signed by Postmaster-General Maynard. The only possible charge is that Sanderson received pay for a daily service on the whole route from January 15, 1881, to February 26, 1881, instead of eighty-nine miles. But we find in the table of payments introduced by the Government, that for that quarter a deduction was made of three thousand four hundred and twenty-two dollars and nineteen cents, showing that the department could only have paid for the daily service on the eighty-nine miles, and that is exactly what the daily service would come to on the balance of the route. That ends that route. We had nothing to do with it anyway. It was Sanderson. He filed his own contract, he got his own orders, he collected his own money and settled with the department. We have nothing to do with it and we will bid it farewell.

The next is No. 38156. First, filing false oath June 12. 1879. The oath was filed May 6, 1879. That is the end of that. I do not care whether it is true or false, that is,

so far as this verdict is concerned. I care whether it is true or false, so far as my clients are concerned, but so far as this verdict is concerned, it makes no difference. There is a fatal variance. Second, it is alleged that Brady made a fraudulent order June 12, 1879. The order of June 12, 1879, was made by French. There is another fatal variance. You have no right to take it into consideration. French is not one of the parties here. Third, sending a subcontract of Dorsey and filing it. As I told you before, you cannot by any possibility thus defraud the Government; not even if you set up nights to think about it. There is no proof that the subcontract was a fraud. Let us have some sense. It is an absolute impossibility to commit this offence, and therefore we will talk no more about it. Fourth, the fraudulent order of Brady increasing the distance four miles. This was done on the 20th of December, 1880. That is the only real charge in this route. I turn to the record and find from the evidence, on page 943, that the distance was from five to six miles, according to the Government's own proof. Beside all that, the order of which they complain is not in the record. It was never proved by the Government and never offered by the Government, so far as I can find. That is the end of that route. The only charge in it is that they increased the distance four miles, and the evidence of the Government is that it was from five to six.

The next is 46132. Overt acts: Filing a false oath by everybody June 24, 1879. The evidence shows it was filed April 11, 1879. That is the end of that. No matter whether it is true or false, it is gone. Second, the fraudulent filing of a subcontract. Well, I have shown you that that cannot be fraudulent. The subcontract of Vaile shows that Vaile was to receive one hundred per cent. It was executed April 1, 1878, in consequence, as my friend

General Henkle explained, of a conspiracy made on the 23d of May following. The service commenced July 1, 1878. There could have been no fraud in it. It was filed as a matter of fact May 24, 1879, and not June 4. Even if it had been a fraud, which is an impossibility, the description is wrong and the variance is fatal. There is no evidence that any order was fraudulent. Every one in this case is supported by petitions, and every petition is admitted to be honest, or proved to be honest and genuine. There is no proof at all, and not the slightest attempt on the part of the Government to prove that there was any fraud on this route. So much for that.

No. 46247. Let us see just where we are. First, filing false and forged petitions. When? July 26, 1879. By whom? By Peck, Dorsey, and Rerdell. Now, after they had solemnly written that in the indictment, and after it had been solemnly found to be a fact by the grand jury, the attorneys for the Government come into court and admit during the trial that all the petitions upon this route were genuine; every one. It was admitted, I say, that every petition was genuine. Read from page 1008 of the record and there you will find what the Court said about these very petitions:

"I shall take the responsibility of dispensing with the reading of petitions when there is no point made with regard to them."

The petitions were so good, they were so honest, they were so genuine, they were so sensible, that the curiosity of the Court was aroused to find what on earth they were being read for on the part of the prosecution. You remember it. Every one genuine, honor bright, from the first line to the last. In reply to the Court at that time Mr. Bliss said:

"There is no point made as to the increase of trips. These—"

Meaning the petitions—

"relate to the increase of trips. There is no point made there."

It is thus admitted that every petition was genuine. Second, a fraudulent order increasing one trip. This order was never proved by the Government. It was not even offered by the Government, so that the route stands in this way: First, a charge of false petitions; second, an admission that the petitions were all genuine; third, a charge that a fraudulent order was made; fourth, no proof that the order was made. That is all there is to that. And that is the end of it.

No. 38134. First, sending false and fraudulent petitions, and filing the same. When? July 8, 1879. On page 1031 of the record I find the following:

"Mr. Bliss. The petitions under your Honor's ruling I am not going to offer."

Why? Because they were all genuine. The court had mildly suggested the impropriety of the Government proving its case by reading honest petitions. Consequently, when it came to this, the next route, he said:

"The petitions under your Honor's ruling I am not going to offer."

Why? Because they are all honest, and under a charge in the indictment that they are all fraudulent he did not see the propriety of reading them. That is what he meant. This remark was made because the Government admitted these petitions to be honest. When were these petitions filed? The indictment says July 8. The evidence says May 6. So that if every petition had been a forgery you could not take them into consideration on this route. It is charged that Miner & Co. signed and placed in Brady's office a false oath on July 8. On record, page 1032, it appears that it was filed May 8, 1879, and not as described in the indictment. The pleader has the privilege of describing it right or describing it wrong. If he describes it right it can go in evidence. If he describes it wrong it cannot go in evidence, and they have no right to complain if you throw out evidence that they make it impossible for

you to receive. It has been charged with regard to this affidavit that Dorsey was not at that time contractor, and therefore had no right to make the affidavit. The affidavit was made April 21, 1879, and the regulation that such affidavits must be made by the contractors was made July 1, 1879. That is a sufficient answer. The next charge is a fraudulent order made by Brady, July 8. The petitions were all admitted to be genuine. There was no evidence that the order was not asked for by the petitions. There was no evidence that the order in and of itself was fraudulent; not the slightest. There is nothing like taking these things up as we go and seeing what the Government has established. I know that you want to know exactly what has been done in this case and you want to find a verdict in accordance with the evidence.

Route 38140. Overt acts: First, making, sending, and filing false petitions. When were they made and sent? The 23d day of May, 1879. There were some petitions filed May 10, 1879, and there was a letter of the same date. They are misdescribed. They are all genuine but they are out of the case as far as this is concerned. I will tell you after awhile where they are applicable in this case. A letter of Belford, of April 29, 1879, and a letter of Senator Chaffee, of April 24, 1879, we have, while the indictment charges that they were all filed May 23, 1879. There is an absolute and a fatal variance. All these petitions, however, are admitted to be genuine and honest. See record, pages 1001-1003. The charge in the indictment is that they were forged, false, and altered. The admission in open court, by the representatives of the Government, is, that they were genuine and honest. There is the difference between an indictment and testimony. There is the difference between public rumor and fact. There is the difference between the press and the evidence. The next is that a false oath was filed by John W. Dorsey on the 23d of May, 1879. When

was that oath filed? April 30, 1879. A fatal variance. Yet the man who wrote the indictment had the affidavit before him. Why did he not put in the true date? I will tell you after awhile. Did he know it was not true when he put it in the indictment? He did, undoubtedly.

Third. Fraudulent order of May 23; reducing the time from nineteen and three-quarter hours to twelve hours. As a matter of fact, no order was made on the 23d of May upon this route. It is charged in the indictment that it was made on the 23d of May. The evidence shows that it was on the 9th of May. There is a fatal variance, and that order cannot be considered by this jury as to this branch of the case. Here is an order of which they complain. They charge that it was made on the 23d day of May, the same day the conspiracy was entered into. As a matter of fact, it was made on the 9th of May. On this description it goes out, and it goes out on a still higher principle: That an order could not have been made on the 9th of May in pursuance of a conspiracy made on the 23d of that month. But I am speaking now simply as to the description of this offence.

Fourth. A subcontract was fraudulently filed. I have shown you it is impossible to fraudulently file a contract; utterly impossible. All the agreements imaginable between the contractor and subcontractor cannot even tend to defraud the Government of a solitary dollar. I make a bid and the contract is awarded to me at so much. The mail has to be carried. The Government pays, say five thousand dollars a year, it makes no difference to the Government who carries the mail under that contract, so long as it is carried. It is utterly impossible to defraud the Government by contracting with A, B, C, or D. That is the end of that route. The order itself is misdescribed, and that is all there is in it. When the order is gone everything is gone.

No. 38113. Overt acts: Fraudulently filing a subcontract. We do not need to talk about that any more. Second, Brady fraudulently made an order for increase of trips. The evidence is that an increase was asked for by a great many officers, a great many representatives, and by hundreds of citizens, and that the increase was insisted upon not only by the officers who were upon the ground, but by General Sherman himself. I do not know how it is with you, but with me General Sherman's opinion would have great weight. He is a man capable of controlling hundreds of thousands of men in the field—a man with the genius, with the talent, with the courage, and with the intrepidity to win the greatest victories, and to carry on the greatest possible military operations. I would have nearly as much confidence in his opinion as I would in the guess of this prosecution. In my judgment, I would think as much of his opinion given freely as I would of the opinion of a lawyer who was paid for giving it. General Sherman has been spoken of slightingly in this case; but he will be remembered a long time after this case is forgotten, after all engaged in it are forgotten, and even after this indictment shall have passed from the memory of man.

No. 38152. Overt acts: Fraudulent orders of August 3, 1880, discontinuing the service and allowing a month's extra pay for the service discontinued. That is all. May it please your Honor, in this route the only point is, had the Postmaster General the right to discontinue the service? And if he did discontinue it, was he under any obligation to allow a month's extra pay? It is the only question. I call your Honor's attention to the case of the United States against Reeside, 8 Wallace, 38; Fullenwider against the United States, 9 Court of Claims, 403; and Garfielde against the United States, 3 Otto, 242. In those cases it is decided not only that the Postmaster-General has the right to allow this month's extra pay, but he must do it. That is in full

settlement of all the damages that the contractor may have sustained. The Court can see the very foundation of that law. For illustration, I bid upon a route of one thousand miles. I am supposed to get ready to carry the mail. Five hundred miles are taken from that route. The law steps in and says that for that damage I shall have one month's extra pay on the portion of the route discontinued. It makes no difference whether I have made any preparation or not. The law gives me that and no more. If I should go into the Supreme Court and say that my preparations had cost me fifty thousand dollars, and the month's extra pay was only five thousand dollars, I have no redress for the other forty-five thousand dollars. That is all that is charged in this instance. And if the Second Assistant Postmaster-General or any one else had done differently he would have acted contrary to law. He is indicted for doing in this case exactly what is in accordance with the law. Let us get to the next route. That is all there is in this.

No. 38015. Overt acts: Sending a false oath. When? May 21. The evidence shows that on May 14 it was sent, on May 15 it was filed. A fatal variance, no matter whether it is true or false. That oath is gone. That is the end of it.

What else? They did not show that the oath was false. First, it is misdescribed in the indictment as to the date it is filed; second, the evidence shows that it is honest and genuine, which is also fatal. That is the end of this route, as far as the indictment is concerned. Second, that Dorsey made and Rerdell filed false petitions. There is no proof that any of the petitions were false, no proof that any were forged, and no proof that John W. Dorsey or M. C. Rerdell had anything to do with that route one way or the other. All the petitions on record, page 1160, are admitted to be genuine except one. One petition asking for a ten-hour schedule was attacked and only one. But this petition was

filed May 14, 1879, and that is out so far as the indictment is concerned.

The COURT. What is the date of the indictment?

Mr. INGERSOLL. The 23d day of May. The indictment says that this was filed July 10, 1879; the evidence says May 14, 1879. A fatal variance. It is not the same one they were talking about. They did not find the petition they described. It is their misfortune. Now, here is only one petition attacked. Who attacked it? Mr. Shaw. See page 1159. They were going to show that that was a forgery, and they were going to show it by Shaw. That was the only one they attacked. What does Shaw say?

"I signed a petition for increase of service and expedition upon that route, but I did not read the petition. If I had, I should have discovered a ten-hour schedule."

He would not have discovered it if it had not been there, would he? That shows it was there.

"I would not have recommended a ten-hour schedule on a seventy-mile route."

He was the man that was going to prove that ten hours was not there. But it shows that he was not able to do it, because he first swore that he never read it, and second, that he would not have signed it if he had. Good by, Mr. Shaw. That is all there is as to that matter. The Court will understand I am going now upon what is in the indictment, and not what has been thrown in from the outside.

The COURT. I understand that.

Mr. INGERSOLL. I am going according to the strict letter of this indictment. I am holding these gentlemen to the law. That is what the law is for. You cannot come into this court and throw seven or eight cords of paper at a man and say, "You are guilty." They have managed this case after that fashion, but I propose to bring them back to the law.

Route 35051. First. Signing, sending and filing false

petitions. When? August 2, 1879. There is no evidence of any petitions being filed on that day—none whatever. The only thing near it is a letter of Frederick Billings, on record, page 1217. This letter was dated July 31, 1879. Under the charge of signing, sending and filing false petitions, the only evidence is that a man by the name of Billings wrote a letter, and there is not the slightest testimony to show that a solitary word in that letter was false —not one. Nothing to connect it with Mr. Billings; no evidence that he ever spoke to him on the subject; no evidence that Billings knew who was carrying the mail; no evidence that he ever knew or did a thing except to write that letter, and he was interested, I believe, in the Northern Pacific railroad. Now, that is everything there is there; that is all there is in that case. Nobody has tried to show that the letter of Billings was not true.

What else? A fraudulent order of August, 1879. Who made it? The indictment says Brady made it. The evidence says it was signed by French, and it was in accordance with Billings' letter. Is there any fraud now in that route? Let us be honest. False petitions: Not one filed. False oath: Not one attacked. Simply a letter that we did not write, and that there is no evidence that we ever asked to have written. That is the end of that. But they cannot even get the letter in, gentlemen. They did not describe it right.

The next route is 40104. Overt acts: First. Fraudulently filing a subcontract. That you cannot do. When did we file it? July 23, 1879, the indictment says. What does the evidence say? May 8, 1879. First, we could not commit the offence; secondly, you could not prove it under this description.

Second. Filing a false oath. When did we file it? July 23. That is what the indictment says. What does the evidence say? November 26, 1878. A fatal variance. See

record, page 1305. That is the end of that. The indictment is for something. You have got to follow it, and it certainly is not as hard work to write an offence against a man as it is to prove it. If they cannot write an offence, you certainly ought not to find the man guilty. Besides all that, that oath was not even impeached, it was not even attacked. There was not a word said upon the subject except in the indictment. It was charged to be false, and not one word of evidence was offered to this jury to show that it was false.

Third. An alleged fraudulent order of increase by Brady, July 23, 1879. Brady never signed any such order. It was signed by French. That is the end of it, no matter whether it was good or bad, honest or dishonest. That is the end of it, and yet there is not a particle of evidence to show that it was dishonest, but you must hold them to their own case as they have written it, and not as they wish it was now.

Fourth. A fraudulent order of April 10, 1880, allowing one month's extra pay on the service reduced. This order was not even proved by the Government. As a matter of fact, it was not offered by the Government; and if it had been offered, and if it had been proved, it would have only established the fact that Mr. Brady acted in accordance with law.

Now, we come to some more. 44160. First, filing false petitions. When did we file them? July 16, 1880. The proof is that they were filed long before that time The proof is that Peck, Dorsey and Rerdell had nothing to do with this route after the 1st of April, 1879, and the petition claimed to be signed by Utah people and claimed to be fraudulent in the petition marked 19 Q. It was filed on the 7th day of May, 1879.

That is a fatal variance. This indictment charges it was filed July 16, 1880. The petition cannot be considered.

There is another petition marked 20 Q, claimed to have been written by Miner, upon which the name of Hall is said to have been forged. It has no file mark whatever, and consequently cannot be the petition referred to in the indictment. That was filed. That, however, has been explained by General Henkle fully. This petition was identified by McBean, and was signed by him, and he recognized the signatures of many of the citizens of Canyon City. Mr. Merrick admitted that the petition, 19 Q, was never acted upon. As a matter of fact, orders had been made before the petition was received, which shows conclusively that they were not acted upon. The petition marked 20 Q, to which Hall's name was, as is claimed, forged, was never filed, and was consequently never acted upon. This charge stands as follows: Two petitions, one being filed May 17, 1879—a fatal variance—and the other not filed —another fatal variance. These petitions are both described as having been filed July 16, 1880. The variance is absolutely fatal, and these petitions cannot be considered. Besides, the order was made before the petition 19 Q was filed.

Second. The fraudulent order by Brady for increase of trips, July 16, 1880. The only objection to this route is that the expedition was made before service was put on. This was in the power of the Postmaster-General. It has been done many times, and is still being done by the Post-office Department, and the fact that it was done in this case does not even tend to show that any fraud was committed or intended. That is all there is in that case. The petitions were never acted upon. One was never filed, and the other is not described, or rather is misdescribed.

Route 48150. Overt Acts: A fraudulent order by Brady reducing service to three trips a week, and allowing a month's pay on service dispensed with July 26, 1880. This point, gentlemen, I have already argued.

Whenever the Post-Office Department dispenses with any service it is bound to give one month's extra pay any time after the contract has been made and any time after the bid has been accepted. It is bound to give the month's extra pay on the service dispensed with, and this question, as you heard me say a little while ago, has been decided by the Supreme Court in Garfielde's case. This route was operated by Sanderson. He was the subcontractor, and, according to the subcontract filed and presented here in evidence, he received every cent of the pay. We could have had no interest in perpetrating any fraud upon that route Why? Because another man, J. L. Sanderson, received every dollar, and we not one cent.

Another fraudulent order of increase, August 24, from Powderhorn to Barnum, seven miles. No fraud was shown, but the order in fact, was made for the benefit of Sanderson and not for the benefit of any of the defendants in this case. In other words, it was made for the benefit of the people, it was made because they wished to reach another post-office.

Another charge is that the subcontract made by Sanderson was filed September 18, 1878. Recollect the charge is about filing this subcontract. The fact is it was filed in 1878 to take effect from July 1, 1878. See record, page 1406. On this very route the subcontract took effect the 1st of July, 1878, with Sanderson, and from that moment until now he has received every dollar. This route, as a matter of fact, is out of the scheme. Sanderson carried the mail from the 1st of July, 1878, until the end of that contract, the last day of June, 1882. So much for that route. It is gone. Nobody can get it back, either, in this scheme.

Route 40113. Overt Acts: Filing of a false oath. When? June 3, 1879. When was it filed? May 7, 1879. That oath is gone. Was it false? They did not attack it. They never impeached it. Good.

Second. False petitions filed. When? June 3, 1879. All the petitions were filed prior to May 10, 1879. They are gone. One was filed May 23, but none was filed as alleged on June 3. They are gone. A magnificently written instrument. A fatal variance as to every petition. And yet not a solitary petition was attacked. Every petition was genuine and honest.

Third. A fraudulent order by Brady for increase and expedition. This order was asked for by the petitions. No fraud was established. See record, page 1503 on this route; also page 2159.

Fourth. They also charge that Brady made a fraudulent order on the 4th of January, 1881. But the Government never proved that order, never offered any order of that date. That is the end of that order.

Fifth. A fraudulent order of February 11, 1881. This was not offered by the Government, and no evidence was offered as to the existence of the order, neither the jacket, nor the order, nor the petitions, so far as I can find. That is the end of that. Every overt act so far, except some of the orders, wrong. The overt acts charged were filing fraudulent petitions. When? May 23, 1879. These are the petitions said to have been gotten up by Wilcox. Mr. Wilcox was a Government witness and he swore that every petition was honest, that every name was genuine, and that in order to get the names he did not circulate a falsehood, he circulated only the truth. To use his own language, "I did only straightforward, honest work." That is all there is on that.

44140 is the number of this route, and this evidence is on record, page 1568, and in regard to getting up these petitions you will recollect the language used by the Court. His Honor said in effect clearly, "Every man carrying the mail has the right to take care of his business. He has the right to get up petitions. He has the right to call the

attention of the people to what he supposes to be their needs in that regard. He has the right to do it; and the fact that he does it is not the slightest evidence that he has conspired with any human being." Deny me the right to attend to my own affairs? If I have taken the route from the Government, and contract to carry the mail, tell me that I cannot suggest to my fellow-citizens that they ought to have a daily mail instead of a weekly? Tell me that I have not the right to talk it on the corners, in every post-office for which I start, and that if I do I am liable to be pursued and convicted of an infamous offence? Every man has the right to attend to his own affairs, and he has the right to get all the people he can to help him. He has no right to go around lying about it, but he has the right to call their attention to the facts the same as you would have the right to get a road by your house; just exactly the same as you would have the right to get a school-house built in your district, no matter if you were to have the contract for making the brick. You have a right to say what you please in favor of education, no matter if you are an architect and expect to be employed to build the schoolhouse, and any other doctrine is infinitely absurd.

There is another charge: That a false oath was filed on the 24th of May. The affidavit was made by Mr. Peck, and I believe it has been admitted that Mr. Peck never did anything wrong. Then there is alleged to be a fraudulent order for increase, signed June 26, and they never introduced the slightest evidence tending to show that there was fraud in the order. It was made in accordance with the petitions. It was made in accordance with what we believed to be the policy of the Post-Office Department. And allow me to say to your Honor that I think that the general policy of the Post-Office Department, as disclosed in the documents that have been presented in the reports made to Congress that have become a part of this case, I

think even from that evidence I have the right to draw an inference as to what the policy of the department was.

The COURT. I have no doubt in the world as to the views of the Post-Office Department in regard to that subject. The Court refused to receive evidence on that subject in defence, for the simple reason that the Court was of opinion that no Second Assistant Postmaster-General had the authority to establish any policy for this Government or for any branch of this Government. The policy of the Government is to be found in its laws, and the Court was unwilling to allow a Second Assistant Postmaster-General to set up his policy in his defence against a charge in this court. He had no right to have a policy.

Mr. INGERSOLL. We never set up the policy of the Second Assistant. We never asked to be allowed to prove the policy of the Second Assistant. We never imagined it, nor dreamed of it, nor heard of it until this moment. What we wanted to show was the policy, not of the Second Assistant, but of the Postmaster-General. But I am not speaking now upon that branch.

The COURT. The Postmaster-General by law is the head of the department of course. But several assistants were given him by law, and he had the authority to apportion out the business of the department amongst those several assistants. The particular business of the department pertaining to the increase of service and expedition of routes belonged under this apportionment to the Second Assistant Postmaster-General. His acts, therefore, are to be looked to.

Mr. INGERSOLL. I do not claim, if the Court please, that his policy had anything to do with it. I simply claim that from the orders that have been introduced, not of the Second Assistant, from the books that have been introduced, showing the views of the Postmaster-General, not of the Second Assistant. I also admit that if the Postmaster-

General had ordered by direct order the Second Assistant Postmaster-General to expedite every one of these routes, even then there could have been such a thing as a conspiracy to expedite them too greatly, and to receive money from every man for whom they were expedited. I understand that. But in the absence of any proof that it is so, all I have ever insisted was that the general policy of the head of the department might be followed by any subordinate officer without laying himself open to the charge that he had been purchased. That is all.

Now, gentlemen, all these things had been asked. They had been earnestly solicited by hundreds of Congressmen, by Senators, by Judges, by Governors, by Cabinet officers and by hundreds and hundreds of citizens.

Now, let me recapitulate all the overt acts—and I have gone over them all now excepting one, and I will come to that presently. In the indictment there are twelve charges as to filing false petitions. There are ten charges as to false oaths. There are seven charges as to fraudulently filing subcontracts; and the evidence is that the ten oaths are substantially true; that it is impossible to fraudulently file a subcontract; and as to the petitions, that every one is absolutely genuine and honest with the exception of three. They prove that the words "schedule, thirteen hours," were inserted; that is, they tried to prove that by Mr. Blois, who is an expert on handwriting, as has been demonstrated to you. One with thirteen hours inserted in it, and the very next paragraph in that same petition begs for faster time. I have not the slightest idea that that ever was inserted by anybody. I believe it was in there when it was signed. And why? There would have been, there could have been, there can be, no earthly reason for inserting those words. You cannot imagine a reason for it.

Now, that is thirteen hours. Then there is another one they say had some names of persons living in Utah, and

we say that that is not described properly; not only that, but that it was never acted upon, and in my judgment that whole thing is a mistake and not a crime, because there were plenty of petitions without that. There was no need of it. All the other petitions have either been proved, or have been admitted to be absolutely genuine.

Now, I have gone over every overt act except payments, and when it was said here in court, or when the objection was made to these being proved as overt acts, the Court will remember that again and again and again, the prosecution denied that they were offered as overt acts.

The COURT. I never understood them as being offered as overt acts.

Mr. INGERSOLL. At that time the Court made just the remark that your Honor has made now. He said: "But what are the payments?" Now, I will take up the payments, and we will see whether there are any overt acts in the payments, gentlemen.

Now, let me call your attention to that magnificent rule that has been laid down by the Court. When you describe an offence you are held by the description. When it is said that I made a false claim against the Government in a conspiracy case, for instance, that I conspired to defraud the Government, that I presented a false claim, it may be that the laxity or lenity of pleading might go the extent of saying that the pleader need not state the amount of that false claim, but if the pleader does state the amount of that false claim he is bound by that statement. Now, that is my doctrine.

The COURT. What I understood in regard to the evidence of the payments is this: The charge was a conspiracy to defraud and the averment was that the fraud had been completed, and this evidence of payments was to show that the fraud had been carried out.

Mr. INGERSOLL. That is all. Now, let us see if this can

be tortured into an overt act. I now come to the presentation of false claims charged to have been presented and collected by these defendants. It is a short business. On the route from Kearney to Kent the charge is that Peck and Vaile presented false claims on the third quarter of 1879 for five hundred and fifty dollars and seventy-two cents. The entire pay for that quarter, three trips and expedition, was seven hundred and ninety-five dollars and seventy-eight cents. And there is no charge that the increase of trips was fraudulent. Only the expedition was attacked. The three trips, according to the old schedule price, came to seven hundred and thirty-five dollars and eighty-one cents, all of which was honestly carried, honestly earned. Now, deducting from the pay seven hundred and ninety-five dollars and seventy-eight cents, the amount of the three trips on the old schedule honestly performed, seven hundred and thirty-five dollars and eighteen cents, if the expedition was fraudulent, we have a fraudulent claim of sixty dollars and sixteen cents. And yet the Government charges that we made a claim of five hundred and fifty dollars and seventy-two cents. Not one cent is allowed for carrying the two additional trips without expedition.

There is another trouble about this. It is charged that Peck and Vaile presented this claim for their benefit. The record, page 386, shows that Peck did not present this claim; that it was presented by H. M. Vaile; that H. M. Vaile received the warrant for the full amount; that he held a subcontract at that time for every dollar. This is another fatal variance, and the evidence of Vaile is that every dollar belonged to him; that not a dollar of that money was ever paid to any other one of the defendants; that he paid all the expenses; that he paid the debts, and that there never went a solitary cent to any Government official. So much for that payment.

The next charge is that on route 41119, from Toquerville to Adairville, Peck presented a false claim for the third quarter of 1879 for two thousand four hundred and sixty dollars and fourteen cents. The pay for that quarter was three thousand six hundred and twenty-eight dollars and fourteen cents for seven trips and expedition. The pay for the three trips on the old schedule was eight hundred and seventy-six dollars, a difference of two thousand seven hundred and fifty-two dollars and fourteen cents. And yet the Government charges that the false claim presented was two thousand four hundred and sixty dollars and fourteen cents. If they give the figures they must give them correctly. If I am charged with presenting a claim against the Government for two thousand four hundred and sixty dollars, that is not substantiated by showing that I presented a claim for two thousand seven hundred dollars. If you give the figures you must stand by the figures, and you are bound by them. You cannot charge one thing and prove something else. This is a fatal variance.

In addition to this fact, we find the deductions for failures in that very quarter amounted to five hundred and forty dollars and forty-two cents, and this deducted from the other amount leaves two thousand, two hundred and eleven dollars and seventy-two cents. So that in both cases the variance is absolutely fatal. I am showing you these things, gentlemen, so that you may see that there is in this case no evidence to fit the charges in this indictment.

44140, Eugene City to Bridge Creek. It is charged that Peck and Dorsey presented a false account for the third quarter of 1879 for four thousand seven hundred and eighty-three dollars and ninety-nine cents. The pay for three trips with expedition was four thousand, six hundred and eighty-nine dollars and twenty-two cents; the pay for one trip on the old schedule was six hundred and seventeen dollars, a difference of four thousand and seventy-two dol-

lars and twenty-two cents. The Government says the difference was four thousand seven hundred and eighty-three dollars and ninety-nine cents, an absolutely fatal variance.

Now, as a matter of fact, there were deductions in that quarter of one thousand nine hundred and thirty-two dollars and eighty-three cents, and this is deducted from the entire pay, leaving only as a claim three thousand seven hundred and sixty-six dollars and thirty-nine cents. And yet the Government charges that we presented a false claim for four thousand seven hundred and eighty-three dollars and forty-nine cents. It will not do. It is a fatal variance. But when we take into consideration that there is no claim that the increase of trips was fraudulent, only the expedition, and that by the old schedule one trip came to six hundred and seventeen dollars, that three trips came to one thousand eight hundred and fifty-one dollars, and that added to deductions would make three thousand seven hundred and seventy-three dollars and eighty-three cents, to be deducted from four thousand six hundred and eighty-nine dollars and twenty-two cents, it would leave as a fraudulent claim, even if their claim was true, nine hundred and fifteen dollars and thirty-nine cents.

Now, the next is 44155, The Dalles to Baker City. The false claim was eight thousand eight hundred and ninety-six dollars, by Peck. The pay per quarter was sixteen thousand six hundred and sixty-six dollars and nine cents. The pay for three trips and expedition was seven thousand seven hundred and seventy dollars—a difference of eight thousand eight hundred and ninety-six dollars and nine cents. But there were deductions, ninety-nine dollars and thirty-four cents, leaving eight thousand seven hundred and ninety-six dollars and seventy-five cents. But by making this claim the Government concedes that the expedition was legal, and another trouble is that the

payment on this route was made to Vaile, not to Peck or Miner. It was made to Vaile, who was the subcontractor for the full amount, and this is another fatal variance.

Now, route 46132, Julian to Colton. The charge is that Peck and Vaile presented a fraudulent claim for the third quarter of 1879, for one thousand six hundred and fifty-seven dollars and seventy-one cents. The pay for three trips and expedition is one thousand nine hundred and fifty-four dollars and seventy-one cents. For three trips on the old schedule it was eight hundred and ninety-one dollars, a difference of one thousand and sixty-three dollars and seventy-three cents. A fatal variance. Besides it was not Peck and Vaile. Vaile was the subcontractor at full rates on this route. He presented the claim. He received the entire pay. Another variance. Route 44160, Canyon City to Camp McDermitt. The charge is that Peck and Vaile presented a false account for the fourth quarter of 1879, for eleven thousand eight hundred and nineteen dollars and sixty-six cents. It is charged in the indictment that this was paid in pursuance of the order set out in the indictment, and we find on page sixty-four that the order was dated July 16, 1880. That was the order. No such payment was made in pursuance of that order for the reason that an order was made nearly a year afterwards, and the order of July 16, 1880, as set out in the indictment, was not retrospective, a fatal mistake in their indictment. As a matter of fact, the pay for the fourth quarter of 1879 was five thousand three hundred and seventy-five dollars. There were deductions to the amount of three hundred and fifty-two dollars and seventy-two cents and the balance was five thousand and twenty-two dollars and twenty-eight cents, instead of eleven thousand eight hundred and nineteen dollars and sixty-six cents. And this was paid to Vaile, who was a subcontractor at full rates, and the variance in the case is absurd and fatal.

Route 46247, Redding to Alturas. The charge is that Peck and Dorsey filed a fraudulent account for the third quarter of 1879 for seven thousand four hundred and eighty-five dollars and six cents. This was in pursuance of the order set out in the indictment, and the only order set out in the indictment is dated February 11, 1881. That is another fatal variance.

The next route is 35051, Bismarck to Miles City. The charge is that Miner and Vaile presented a false account for the fourth quarter of 1879, for fourteen thousand one hundred. The pay for the quarter for six trips was seventeen thousand five hundred dollars. For three trips under the old order the pay was eight thousand seven hundred and fifty dollars, leaving eight thousand seven hundred and fifty dollars as the outside sum that could have been fraudulent, and yet the Government charges fourteen thousand one hundred dollars, an absolutely fatal variance. Besides that, there were deductions in that very quarter of four thousand five hundred and three dollars. This amount deducted from eight thousand seven hundred and fifty dollars leaves four thousand two hundred and fifty-six dollars and eleven cents as the greatest amount that could by any possibility have been fraudulent.

Three routes are lumped together next in the indictment, 38134, 38135, 38140, 38134, Pueblo to Rosita; 38135, Pueblo to Greenhorn; and 38,140, Trinidad to Madison.

The charge here is on page eighty-one of the indictment that Miner presented a fraudulent account for the fourth quarter of 1879 on all the routes amounting to two thousand seven hundred and seventy-six dollars and forty-seven cents.

The greatest possible difference that could be made on route 38135 is seven hundred and sixty-seven dollars and twenty cents. The greatest difference that could be made on route 38134 is one thousand nine hundred and forty dollars.

The greatest difference that could be made on route 38140 is six hundred and eighty-nine dollars and fifty-one cents. These three differences added together do not make what is charged in the indictment, three thousand seven hundred and seventy-six dollars and forty-seven cents, but as a matter of fact they amount to three thousand three hundred and ninety-six dollars and seventy-one cents. This cannot be the fraudulent claim described in the indictment.

But I find that on the first route there was a reduction of twelve dollars and sixty cents, on the second route of one hundred and fifty-four dollars and thirty-eight cents, and on the third of thirty-eight dollars and two cents, and these deductions added together make two hundred and five dollars and ninety cents, and deducted from the three thousand three hundred and ninety-six dollars and seventy-one cents leaves three thousand one hundred and ninety dollars and eighty-one cents. And yet the Government charges that the fraudulent claim was two thousand seven hundred and seventy-six dollars and forty-seven cents. It is impossible that the amount of the claim said to be fraudulent by the Government can be correct; but, as a matter of fact, according to the evidence, there was no fraud upon any claim in that route.

The next is route 38150, Saguache to Lake City. The charge is that Miner presented a false account for two thousand two hundred and two dollars and seventy-seven cents, and that he did this in pursuance of the order set out in the indictment, and the only order set out is dated August 24, 1880. That is an absolutely fatal variance. As a matter of fact, Sanderson was a subcontractor on this route from July 1, 1878, at full rates, and he carried the mail from July 1, 1878. The route was expedited on his oath and for his benefit. No point was made during the trial that the oath was not true. And the pay was calculated upon Sanderson's oath, and the money paid to him. The only claim is that there was an error in the order of four thousand five hundred and sixty-eight dollars per year, and it is admitted that the mistake was afterwards

corrected and the money refunded. You remember it, gentlemen. Mr. Turner, in making up the account showing how much the expedition would come to—and you understand the way in which they make up that expedition—made a mistake and added to the expedition and the then schedule the amount of the then schedule, four thousand and odd dollars. He made the mistake and it was honestly made. No man would dishonestly do it because it was so easy of detection, and that was his only fault, gentlemen. The only crime he ever committed in this case was to make that mistake. That mistake was afterwards discovered, and the money was paid back by Mr. Sanderson ; and, yet, that man has been indicted, has been taken from his home charged with a crime. He has been pursued as though he were a wild beast. He made one mistake. They could not prove the slightest thing against him. There was no evidence touching him. There was only one way for them, and that was to dismiss him with an insult. You remember the case. Not one thing against that man—not one single thing. He stands as clear of any charge in this indictment as any one upon this jury. He is an honest man. It is admitted now there was no conspiracy on this route either. It is Sanderson's route, not ours. Not only that, but the Government says that it was not one of the routes with which Vaile had anything to do, or in which Vaile had any possible interest. The failure here is fatal to the indictment, and I shall endeavor to show that it is fatal to the entire case.

The next route is 35105, Vermillion to Sioux Falls. It is charged that Vaile and Dorsey presented a false account for the third quarter of 1879, for eight hundred and eighty-one dollars and fourteen cents. The pay for six trips and expedition was one thousand and eighty-five dollars and fifty-eight cents. The pay for two trips on the old schedule was two hundred and four dollars and forty-four cents, showing a balance for once, as stated in the indictment—it being the only time—of eight hundred and eighty-one dollars and fourteen cents. Parties are entitled to pay for the extra trips, and

the number of men and horses has nothing to do with the value of an extra trip. You understand that. If I agree to carry the mail once a week for five thousand dollars a quarter, and you wanted me to carry it twice a week, then I get ten thousand dollars a quarter, no matter if I do it with the same horses and the same men. That is not the Government's business. You all understand that, do you not? Every time you increase a trip you increase the pay to the exact extent of that trip, no matter whether it takes more horses or not. If I agree to carry the mail once a month for five thousand dollars a year, and you want me to carry it once a week I am entitled to twenty thousand dollars, no matter if I do it with all the same men and same horses. It is nobody's business. But, if the Government wants the mail carried faster, then I am entitled to pay according to the men and animals required at a more rapid rate. You all understand that. But as a matter of fact, upon this route, Vaile was the subcontractor at full rates, was so recognized by the Government and received every dollar himself, and, consequently, the charge that it was paid to John W. Dorsey is not true, and is a fatal variance. The Government proved it was paid to Vaile.

Next we have two routes, 38145, Ojo Caliente to Parrot City, and 38156, Silverton to Parrot City. These routes are put together in the indictment. It is charged that a false account was presented of six thousand and four dollars and seventeen cents, and that this was done in pursuance of an order set out in the indictment. The order set out is on page forty-seven. It is in relation to route 38145. The order was made not in relation to the other route. No order as to the other route was made. This was made February 26, 1881, consequently the claim presented for the third quarter of 1879 could not by any possibility have been in pursuance of that order. That order was made in 1881. The payment for the third quarter of 1879 could not by any possibility have been made in pursuance of that order. The evidence shows that it was paid before, and consequently there is a fatal variance.

Routes 40104, Mineral Park to Pioche, and 40113, Wilcox to Clifton—two routes put together. The charge is a fraudulent presentation for the third quarter of 1879, of seven thousand and sixty-four dollars and seventy-two cents. The pay on the first route was ten thousand five hundred and three dollars and sixty-two cents, on the second route three thousand five hundred and twenty-eight dollars. No proof has been offered that the expedition was fraudulent. Not a witness was called on route 40113. Not a solitary petition was objected to, the truth of no oath was called in question, the honesty of no order was attacked, and how can you say that the claim was fraudulent? No order attacked, no oath questioned, no petition impeached. The only evidence upon these two routes was something read in regard to productiveness and the size of the mail, and that is all.

Route 38113, Rawlins to White River. The charge is that John W. Dorsey and Rerdell presented a false account for the third quarter of 1879 for two thousand nine hundred and seventy-five dollars. The order set out in the indictment was made March 8, 1881, consequently the variance is absolutely fatal, and there is no allegation in the indictment that the expedition was fraudulent.

Now I have gone through every route with the payments. As to the general allegation of the amount of money fraudulently claimed and received, the allegation in the indictment is that J. W. Dorsey received, by virtue of these fraudulent orders, made in pursuance of the conspiracy, brought to perfection by these overt acts, for the year ending the 30th day of June, 1880, one hundred and twenty-four thousand five hundred and ninety-one dollars. Good. The evidence shows that there was paid on the seven Dorsey routes in all sixty-two thousand eight hundred and thirty-one dollars and forty-six cents. That is fatal as to that.

But we will go further. One of these routes was turned over to Vaile by Dorsey, route 35015, and the amount paid to Vaile was two thousand eight hundred and thirty-seven

dollars and sixteen cents. So that the amount paid on the Dorsey routes, instead of being one hundred and twenty-four thousand five hundred and ninety-one dollars, was in truth and in fact fifty-eight thousand nine hundred and ninety-four dollars and thirty cents.

Now, the charge is that this was all received by John W. Dorsey, whereas the evidence shows that John W. Dorsey received three warrants, two for eighty-seven dollars each, both of which were recouped, and one warrant for three hundred and ninety-two dollars, and that is every cent he ever received, according to the evidence in this case. There is what you might call a discrepancy. The indictment says he got one hundred and twenty-four thousand five hundred and ninety-one dollars. The evidence shows that he got three hundred and ninety-two dollars and not another copper. I shall insist that that is a variance. If it is not a variance, I will take my oath it is a difference.

The second claim is that John R. Miner received upon the routes awarded to him, and claimed to be his in the indictment, ninety-three thousand and sixty-seven dollars for the fiscal year ending June 30, 1880. The evidence is that as a matter of fact on all these routes the money was paid to assignees and subcontractors, and that John R. Miner as a fact, received not one cent from the Government.

The third charge is that Peck received for the same fiscal year one hundred and eight-seven thousand four hundred and thirty-eight dollars. The evidence shows that he received nothing. There is another difference. Thus it will be seen that every link in the chain in this indictment is either a mistake or a falsehood. Every other one is a mistake and then every other one is a falsehood, and this indictment was made by adding mistakes to falsehoods, and what the indictment weaves the evidence reveals.

Now why were these dates put in this indictment, gentlemen? We have now gone over every overt act charged in

this indictment. The result is that not one of the charges set forth has really been sustained. Hereafter I will notice some things that have been proved outside of the indictment. Nearly every petition and letter is admitted to have been honest and genuine. Those that have been attacked were misdescribed in the indictment and the evidence has shown that they were substantially true. There is a fatal variance between the allegation and the proof so far as these charges in the indictment are concerned, and they are left absolutely without a prop. The dates attached to the overt acts are false. There is only one of the routes in which the petitions are properly described, and that is route 44140, where the petitions are alleged to have been and were filed on the 23d of May, and every one was proved to have been genuine and honest. The dates in the indictment were false. Now, why? Let me tell you, gentlemen. They had to deceive the grand jury. It would not do to tell the grand jury these men conspired on the 23d of May, and in pursuance to that conspiracy filed some affidavits on the third day preceding. They had first to deceive the grand jury and put in false dates for the filing of petitions, for the filing of subcontracts and for the drawing of money. What else did they want these false dates for? To deceive the Circuit Court, or rather the Supreme Court—to deceive his Honor, because if the date of these petitions, the date of these oaths, had been set forth in the indictment it would have been bad. The Court would have instantly said, you cannot prove a conspiracy on the 23d of May by showing acts in April previous. So these false dates were put in, in the first place, to fool the grand jury, and in the next place to keep this Court in the dark. It was necessary to have a good charge on paper, and why? Did they expect to win this case on that indictment? No; but they could keep it in court long enough to allow them to attack and malign the character of these defendants; they could keep it in court long enough to vent their venom and spleen

upon good and honest men, and justify in part the commencement of this prosecution.

This forenoon I tried to strip the green leaves off the tree of this indictment. Now I propose to attack the principal limbs and trunk. What is the scheme of this indictment? I insist that the law is precisely the same as to the scheme of the conspiracy in its description that it is as to the description of an overt act. Now, what is the scheme of this indictment? That is to say, the scheme of this conspiracy? We want to know what we are doing. It is the great bulwark of human liberty that the charge against a man must be in writing, and must be truthfully described.

First. For the defendants, with the exception of the officers Brady and Turner, to write, and procure the writing of, fraudulent letters, communications, and applications. Now, let us be honest. Is there the slightest evidence that a fraudulent letter was ever written? Is there the slightest evidence that a fraudulent communication was ever sent to the department? Not the slightest evidence.

Second. To attach to said petitions and applications forged names. Is there any evidence of that except in one case, and the evidence in that case is that the order was made before the petition was received and that the petition was never acted upon. More than that, is there any evidence as to who forged any names to any petitions? Not the slightest. Which of these defendants are you going to find guilty upon that petition when there is not the slightest evidence as to who wrote it? What next? To have these petitions signed by fictitious names or with the names of persons not residing upon the routes. Is there any evidence of that kind? Is there any evidence that the signatures of real persons were attached, and the real persons did not live upon the routes? I leave it to you, gentlemen.

Fourth. To make and procure false oaths, declarations, and statements. Those I shall examine.

Fifth. For William H. Turner falsely to indorse on the back

of these jackets false brief statements of the contents of genuine petitions. You know what has become of that charge, gentlemen.

This indictment against Turner has been changed into a certificate of good moral character. That is the end of the indictment, so far as he is concerned, and I am glad of it. He is a man who fought to keep the flag of my country in the air, and who lay upon the field of Gettysburg sixteen days with the lead of the enemy in his body, and I am glad to have the evidence show that he was not only a patriot, but an honest man with a spotless reputation. I do not think that, in order to be a great man, you have got to be as cold as an icicle. I do not think that if you wish to be like God (if there is one) it is necessary to be heartless. That is not my judgment. When I find that a man is honest I am glad of it. When I find that a patriot has been sustained my heart throbs in unison with his. What is the next? That Brady, for the benefit, gain, and profit of *all* the defendants—and I emphasize the word all because upon that I am going to cite to the court a little law—made fraudulent orders ; that is, for the benefit of Turner, Brady, and everybody else. Eighth. That he caused these fraudulent orders to be certified to the Auditor of the Treasury for the Post-Office Department Ninth. That Brady refused to enter fines against these contractors when they failed to perform their service ; that he fraudulently refused to impose these fines. What is the evidence? The evidence is that the whole amount of fines imposed by Brady was one hundred and twenty-six thousand eight hundred and sixty-five dollars and eighty cents. That evidence is given in support of the charge that he refused to impose them, yet the imposition amounts to one hundred and twenty-six thousand dollars. How much of that vast sum did he relieve the contractors from upon the evidence? Twenty-three thousand dollars, leaving standing of fines that were paid, one hundred and three thousand six hundred and seventy dollars and twelve cents. That evidence is offered to

show that he conspired not to impose the fines. One hundred and twenty-six thousand dollars imposed in fines, and only twenty-three thousand dollars remitted. Yet the charge was, and an argument has been made upon it before this jury, that the contractors agreed that he was to have fifty per cent. of all fines that he took off. Think of a man making that contract with a man having power to impose the fines. "Now, all you will take off I will give you fifty per cent. of." There is an old story that a friend of a man who was bitten by a dog said to him, "If you will take some bread and sop it in the blood and give it to the dog it will cure the bite." "Yes," he says; "but, my God, suppose the other dogs should hear of it?" Think of putting yourself in the power of a man who has the right to fine you. And yet that is a part of the logic of this prosecution. The next charge is of fraudulently cutting off service and then fraudulently starting it and allowing a month's extra pay. That happened, I believe, in two cases—thirty dollars in one case and something more in the other.

The COURT. Thirty-nine dollars.

Mr. INGERSOLL. Then the case is nine dollars better than I thought. Twelfth. By the defendants fraudulently filing subcontracts. That I have already shown is an impossible offence. All these things were done for the purpose of deceiving the Postmaster-General. Now, the Court has already intimated that we have no right to say that the Postmaster-General would be a good witness to show whether he was deceived or not, and that it may be that his eyes were sealed so tightly that he has not got them open yet. But whether they can prove it by him or by somebody else they have got to prove it in order to make out this case.

That is the scheme of this indictment. It makes no difference whether the Postmaster-General has found out that he was deceived or not. The jury have got to find it out before they find a verdict against the defendants. It is possible that the Postmaster-General thinks he was not deceived or that he

was ; I do not know what his opinion is and do not care. They have got to prove it by somebody. I do not say they can prove it by him. I do not know. This is the scheme, and what I insist is that this scheme must be substantiated and must be proved precisely as it has been laid without the variation of a hair. You must prove it as you have charged it, and you must charge it as you prove it. It is simply a double statement. I wish to submit some authorities to the Court upon this question : Must the exact scheme be proved ? First, I will refer the court to the tenth edition of Starkie, page 627 : * * *

"It is a most general rule that no allegation which is descriptive of the identity of that which is legally essential to the claim or charge can ever be rejected. * * * As an absolute and natural identity of the claim or charge alleged with that proved consists in the agreement between them in all particulars, so their legal identity consists in their agreement in all the particulars legally essential to support the charge or claim, and the identity of those particulars depends wholly upon the proof of the allegation and circumstances by which they are ascertained, limited and described."

No matter whether the description was necessary or unnecessary :

"To reject any allegation descriptive of that which is essential to a charge or a claim would obviously tend to mislead the adversary. * * * It seems, indeed, to be a universal rule that a plaintiff or prosecutor shall in no case be allowed to transgress those limits which in point of description, limitation, and extent he has prescribed for himself ; he selects his own terms in order to express the nature and extent of his charge or claim, he cannot therefore justly complain that he is limited by them. * * * As no allegation therefore which is descriptive of any fact or matter which is legally essential to the claim or charge can be rejected altogether, inasmuch as the variance destroys the legal identity of the claim or charge alleged with that which is proved, upon the same principle no allegation can be proved partially in respect to the extent or magnitude where the precise extent or magnitude is in its nature descriptive of the charge or claim."

Nothing can be plainer than that. I refer also to Starkie on Evidence, 7th American edition, vol. 1, page 442. There he says :

"In the next place it is clear that no averment of any matter

essential to the claim or charge can ever be rejected, and this position extends to all allegations which operate by way of description or limitation of that which is material."

I also cite Russell on Crimes, 9th American edition, vol. 3, page 305, and Roscoe's Criminal Evidence, 7th edition, page 86.

I now call the attention of the Court to the case of Rex *vs.* Pollman and others, 2 Campbell, 239. I may say before reading this decision that, in my judgment, so far as the scheme of this indictment is concerned, it should end this case:

"This was an indictment against the defendants which charged that they unlawfully and corruptly did meet, combine, conspire, consult, consent and agree among themselves and together, with divers other evil-disposed persons, to the jurors unknown, unlawfully and corruptly to procure, obtain, receive, have and take, namely, to the use of them, the said F. P., J. K. and S. H., and of certain other persons to the jurors likewise unknown, large sums of money, namely, the sum of two thousand pounds, as a compensation and reward for an appointment to be made by the lord's commissioners of the treasury of our lord the king of some person to a certain office, touching and concerning His Majesty's customs, to wit, the office of a coast waiter in the port of London, through the corrupt means and procurement of them, the said F. P., J. K. and S. H., and of certain other persons to the jurors unknown, the said office then and there being an office of public trust, touching the landing and shipping coastwise of divers goods liable to certain duties of custom."

The indictment went on and stated various overt acts in furtherance of the conspiracy.

"There were several other counts which all laid the conspiracy in the same way."

Now I come to the part of the case which, in my judgment, affects this:

"It appears that the defendants Pollman, Keylock and Harvey had entered into a negotiation with one Hesse to procure him the office mentioned in the indictment for the sum of two thousand pounds, which they had agreed to share among themselves in certain stipulated proportions; but although this money was lodged at the banking house of Steyks, Snaith & Co., in which the defendant Watson was a partner, and he knew it was to be paid to Pollman and Keylock upon Hesse's appointment, there was no evidence to show that

he knew that Sarah Harvey was to have a part of it, or that she was at all implicated in the transaction."

He was a co-conspirator, and he knew that the money was to be deposited at this place.

He knew that, but he did not know that Sarah Harvey was to have a part of it.

"Lord Ellenborough threw out a doubt whether as to Watson the indictment was supported by the evidence."

The evidence being that Watson did not know that it was to be divided in the precise way stated in the indictment. Manifestly, they need not have stated in the indictment how it was to be divided; but having stated it, the question is: Are they bound by the statement? Let us see:

"The attorney-general contended that the words in italics coming under a *videlicet* might be entirely rejected. The sense would be complete without them. The indictment would then run that the defendants conspired together to obtain a large sum of money as a consideration and reward for appointment to be made by the lord's commissioners of the treasury. This was the *corpus delicti*. The use to which the money might be applied was wholly immaterial. The offence of conspiring together would be complete however the money might be disposed of."

True.

"There was no occasion to state this, and the averment might be treated as surplusage. Suppose the manner in which the money was to be disposed of had been unknown. Would it have been impossible to convict those engaged in the conspiracy? But, without rejecting the words, the variance was immaterial. The charge in the indictment had been substantially made out as laid.

"Dallas and Walton, of counsel for Watson, denied that the words could be rejected, though laid under a *videlicet*, as they were material, and they were not repugnant to anything that went before. The application of the money might be of the very essence of the offence. Suppose it had been obtained for the use of the lords of the treasury, who would make the appointment: would not this be a much greater crime than if the money had been obtained for the benefit of a public charity?"

I think that reasoning is bad. I think the crime is exactly the same.

"But if the words were rejected then the variance was more palpable. In that case, there being no mention of any persons to whose

use the money was obtained, the necessary presumption was that it was obtained to the use of the defendants themselves."

That is good sense.

"The evidence shows, however, that Watson was to have no part of it, and that he was utterly ignorant of the manner in which it was to be distributed.

"Lord ELLENBOROUGH. There can be no doubt that the indictment might have been so drawn as to include Watson in the conspiracy. Even if the manner the money to be applied was unknown, this might have been stated on the face of the indictment, and then no evidence of its application would have been required. The question is, whether the conspiracy as actually laid be proved by the evidence?"

That is the question: Have they made out a case according to the scheme of the indictment? Has the conspiracy as laid been proved by the evidence?

"I think that as to Watson it is not. He is charged with conspiring to procure this appointment through the medium of Mrs. Harvey, of whose existence for aught that appears he was utterly ignorant. When a conspiracy is charged it must be charged truly."

He did not know that Mrs. Harvey was to have a portion of the money, and yet she was a member of the conspiracy. The evidence showed that she was to have a portion of it, and Lord Ellenborough says that they did not prove the charge as laid, and that it cannot include Watson.

"Garrow submitted that it was unnecessary to prove that each of the defendants knew how the money was to be disposed of, and that it was enough to show that the destination of the money was as stated in the indictment. A fact of which all those engaged in the conspiracy must be taken to be cognizant. Watson by engaging with the other conspirators to gain the same end, had adopted the means by which the end was to be accomplished."

That is what the attorney for the Government says. Lord Ellenborough replies:

"You must prove that all the defendants were cognizant of the object of the conspiracy and the mode stated in the indictment by which it was to be carried into effect. A contrary doctrine would be extremely dangerous. The defendant Watson must be acquitted."

Now let us apply that case to this. In the first place, they must not only prove this indictment according to the scheme, but they must prove that every defendant understood

that scheme, knew the scheme, how it was to be accomplished and what was done with the money.

The COURT. In that case Watson was acquitted. What was done with the others?

Mr. INGERSOLL. They, of course, were found guilty, because they were guilty, as the indictment charged. They knew the exact scheme set forth in the indictment. They were guilty exactly as the indictment said. They divided the money exactly as the indictment charged they divided the money, and they were cognizant of every fact set forth in the indictment. But Watson, although a co-conspirator, did not know what was to be done with the money, and consequently was to be discharged. Why? Because they did not prove the conspiracy as to him as charged. They need not have set forth in the indictment what was to be done with the money, but they did set it forth, and then they had to prove it. They need not have said that every man knew what was done with the money, but they did say that every man knew, and they failed to prove it, and when they failed to prove it as to Watson he was discharged.

Now, gentlemen of the jury, what I insist upon and what I shall ask the Court to instruct you is that the Government, no matter how guilty the defendant may be, no matter if he has robbed this Government of hundreds of millions, is to be tried by this indictment, is to be guilty of this charge as written in this indictment and nowhere else; and he has got to understand it. They say he understood it, and they have got to prove that he understood it.

Now, upon that same subject they say that the money was to be divided between all these parties—between Rerdell, Turner and everybody. I think it was Mr. Bliss who said there was no evidence that Rerdell ever had any of the money. Certainly they do not think that Turner obtained any of the money. Is there any evidence of it? Not the slightest. Is there evidence that there ever was any division, any evidence that there was ever any money divided upon a solitary route

mentioned in this indictment? Not one particle. If you say there is evidence, when was the division made?

The COURT. The question is not what was done. The question is with what view the conspiracy was entered into.

Mr. INGERSOLL. Certainly.

The COURT. The object of the conspiracy may have failed, and this money might not have been divided as they intended, but still the conspiracy would be here.

Mr. INGERSOLL. Good, perfectly. But if they set forth in this indictment that the money was divided, that statement is not worth a last year's dead leaf unless they prove it. That is all I insist upon. You cannot find anybody guilty of charges in an indictment unless you prove them. Unless you prove them they amount to no more than charges written in water, than characters engraved on fog or written on clouds. You have got to prove them.

Now, upon this same point I say that if the scheme has not been established by the evidence, the case fails, no matter what the proof. The offence must not only be proved as charged, but it must be charged as proved, doubling the statement for the sake of doubling the idea of accuracy. That is in Archibald's Criminal Pleadings, American edition, page 36. The same thing is held in First Chitty's Criminal Law, 213. I also refer to the case of King against Walker, 3d Campbell, 264; King *vs.* Robinson, 1st Hope's *Nisi Prius* Reports, 595. I have the books here, but I will not take up the time of this Court in reading them.

Now, if I am right, that is the language of that indictment. The overt acts with the leaves are gone; the scheme with the branch and trunk are gone. They prove no such scheme, they prove no such division.

I will now proceed to examine the alleged evidence against my clients, Stephen W. and John W. Dorsey, and I want to say right in the commencement that suspicion is not evidence. You charge that a couple of persons conspired. That they met about nine o'clock on the shadowy side of the street.

*A suspicious circumstance.* Why did they not get *under the lamp?* They were seen together once more, and the moment a man came up *they walked off.* GUILTY. They ran. And out of these idiotic suspicions that never would have entered the mind, except for the reason that the persons were charged, hundreds of people begin to say, "There is something in it. They met four or five times. One of them wrote a letter to the other, and so help me God it was not dated." *Another suspicious circumstance.* "There was a heading on the paper. It was not the number of his office." So they work it up, and ignorance begins to stare, and wonder to open its mouth, and finally prejudice finds a verdict.

Suspicion, gentlemen, is not evidence. You want to go at this with this idea. Whatever a man does, the presumption is it is an honest act until the contrary is shown. These men wrote letters. They had a right to do it. They met. They had a right to meet. They entered into contracts. They had a right to do it, no matter whether they were dated or not dated. One of the greatest judges of England said if you let out of the greatest man's brains all the suspicions, all the rumors, all the mistakes, and all the nonsense, the amount of pure knowledge left would be extremely small. If you take out of this case all the suspicions, all the guesses, all the rumors, all the epithets, all the arrogant declarations, the amount of real evidence would be surprisingly small.

Now, I want to try this case that way. I do not want to try it by prejudice. Prejudice is born of ignorance and malice. One of the greatest men of this country said prejudice is the spider of the mind. It weaves its web over every window and over every crevice where light can enter, and then disputes the existence of the light that it has excluded. That is prejudice. Prejudice will give the lie to all the other senses. It will swear the northern star out of the sky of truth. You must avoid it. It is the womb of injustice, and a man who cannot rise above prejudice is not a civilized man; he is simply a barbarian. I do not want this case tried on

prejudice. Prejudice will shut its eyes against the light. I want you to try it without that.

And right here, although it is a subject about which most courts are a little tender, the question arises as to the jury being judges of the law and fact. One of the attorneys for the Government, Mr. Merrick, told us that at one time he insisted that the jury was the judge of the law, and made this remarkable declaration :

"But even at the time I spoke the words to the jury I did not believe them to be indicative of safe and true principles of law."

Was he candid then? Is he candid now? I do not know. But his doctrine appears to be this: "When I am afraid of the court I insist on the jury judging the law. When I am afraid of the jury I turn the law over to the court. But in this case, having confidence in both judge and jury, it is wholly immaterial to me how the question is decided."

Now, if it please the Court, I believe the law to be simply this : I believe the jury to be absolute judges of the facts, and yet if on the facts they find a man guilty whom the court thinks is not guilty, the court will grant a new trial. The court has the power to set aside a verdict because the jury find contrary to the evidence. The court cannot do it, however, when the jury finds a verdict of not guilty. I do not believe that the jury have a right to disregard the law from the court unless a juryman upon his oath can say that he believes, he knows, or is satisfied that is not the law ; and he must be honest in that, and he must not be acting upon caprice. He must be absolutely honest. He must be in that condition of mind that to follow the law pointed out by the court would trample upon his conscience, and that he has not the right to do. That is all the distance I go.

The history of the world will show that some of the grandest advances made in law have been made by juries who would not allow their consciences to be trampled into the earth by tyrannical judges. I am not saying that for this case. I am simply saying that as a fact. There was a time in this

country when they used to try a man who helped another to gain his liberty, and there was now and then a man on the jury who had sense enough, and heart enough, and conscience enough to say, "I will die before I carry out that kind of law." They did not carry it out either, and finally the law became so contemptible, so execrable, that everybody despised it. All I ask this jury to do is just to be governed by the evidence and by the law as the Court will give it to them, honestly and fairly.

Now, I am coming to the evidence against John W. Dorsey. I am traveling through this case now we have started it. As you have heard very little about it, gentlemen, and there is nothing in the world like speaking on a fresh subject. I feel an interest in John W. Dorsey. He is my client. I believe him to be an absolutely honest man. He is willing to take the effect of all his acts. He is no sneak, no skulk. He will take it as it is. Let us see what he has done.

The first witness is Mr. Boone. Mr. Boone swears that John W. Dorsey was one of the original partners. Well, that is so. It is claimed that the conspiracy was entered into before there was any bidding. Well, Boone does not uphold that view. Now, if Boone and Miner and John W. Dorsey and Peck had an arrangement with Brady whereby they were to bid and then have expedition and increase, I want to ask you why did Boone write to all the postmasters to find out about the roads and the cost of provender, and the kind of weather they had in the winter in order to ascertain what bid to make? If he had had an arrangement with the Second Assistant Postmaster-General to expedite the route he would have simply made up his mind to bid lower than anybody else, and he would not have cared a cent what kind of roads they had there, or what kind of weather they had in the winter, or how much horse provender cost, and yet he sent out thousands of circulars to find out these facts. For what? To make bids. What for? According to the Government these were routes on which they had already conspired for

expedition and increase without the slightest reference to the horses and men, and of course, if that theory is true, Boone is one of the conspirators. But I will come to that hereafter.

More routes, according to Boone's testimony, were awarded than they anticipated. They got, I think, one hundred and twenty-six. They had no money to stock the routes. They got more than they expected. Well, that was not a crime. Boone left in August, 1878, and Mr. Merrick takes the ground that Boone had done the work, manipulated all the machinery, and yet could not be trusted with the secret. Boone had gathered all the information, he had done the entire business, and yet the secret up to that time had been successfully kept from him. Do you believe that?

Now, Vaile came, and another partnership was formed, and the second partnership remained in force, I think, till the 1st of April, 1879, or the last day of March, and then the routes were divided. Now, then, John W. Dorsey is charged with conspiracy as to these routes, and these routes were afterwards assigned to S. W. Dorsey to secure advances and indorsements that were made.

Now, of the routes mentioned in the indictment, John W. Dorsey was interested in seven at the time of the division. From Vermillion to Sioux Falls, from White River to Rawlins, from Garland to Parrott City, from Ouray to Los Pinos, from Silverton to Parrott City, from Mineral Park to Pioche, and from Tres Alamos to Clifton. How much money did he get on all these routes? I have already shown you. He received two warrants for eighty-seven dollars and they recouped them both. He received another warrant for three hundred and ninety-two dollars and succeeded in keeping it. That is all the money he got in these seven routes. Now, the testimony of Mr. Vaile shows, if it shows anything, that after April, 1879, he took those routes and kept them and never paid a dollar to any official in the world, and he also swears that no matter how much he got, it made no difference as to the routes that had been given to John W. Dorsey and

Peck. It could not in any way affect their amount, and that no person in the world except themselves had any interest in them.

Now, it is charged that false affidavits were made by John W. Dorsey, and that the making of these false affidavits was the result of conspiracy. Let us see. It has been shown by the evidence, and I have already shown it, and conclusively shown it, that the affidavit was substantially correct, so far as the proportion was concerned.

Now, let me explain what I mean by proportion. For instance, I am getting five thousand dollars a year on a route, and it takes five men and ten horses. That is an aggregate of fifteen. Now, suppose I simply expedite it a certain number of miles an hour, and say it will take fifteen men and thirty horses. That makes an aggregate of forty-five, does it not? Then the Government gives me three times as much for the expedited service as for the then service. Now, suppose I am getting a thousand dollars, and it only takes one man and one horse, and I make an affidavit that it takes one hundred men and one hundred horses, and if it is expedited it will take two hundred men and two hundred horses, how much more do I get? I get just double, and the result of the affidavit is exactly the same as though I said the one man and one horse that it then took, and it would require two men and two horses. If you keep the proportion you cannot by any possibility commit a fraud against the Government. Now we understand that. Now let us see. When you make an affidavit, what do you do? When you make an affidavit of how many horses it will take, you take into consideration the length of the term, three or four years. You take into consideration the life of a horse. You take into consideration the roads and the weather. You take into consideration every risk, and find it is only a matter of judgment, only a matter of opinion, and the fact that men differ as to their judgment upon those points accounts for the fact that they make different affidavits. If everybody made the same calculation as to

food, as to weather, as to roads, as to disease, everybody would make substantially the same bid, but on the same route they differ thousands of dollars a year, because they differ in judgment as to the number of horses it will require and as to the number of men.

And then there is another thing. Some men will make a horse do twice as much as others. Some men are hard and fierce and merciless. Some men are like they ask you to be in this case—icicles. Some men resemble the gods so far that they will make a horse do five times the work they should, and other men are merciful to the dumb beast. So they differ in judgment. One man says he can go twenty-five miles every day, and another man says he can only go fifteen. One man says stations ought to be built twenty-five miles apart; another says they should be built ten miles apart. They differ, and for that reason, gentlemen, the bids differ, and for that reason the affidavits differ.

I shall not speak of all these affidavits, but I shall speak of the ones that have been attacked. Mr. Merrick called Mr. Dorsey a perjurer because he made two affidavits on route 38145. Now, no such charge is made in the indictment, but I will answer it. Now, then, as to the two indictments—

The COURT. Two affidavits.

Mr. INGERSOLL. Two affidavits. Well, there ought to have been two indictments to cover both cases. Now, this is on route 38145, Garland to Parrott City. Now, there were two affidavits made on 38145, as is set forth in the evidence, but it is not in the indictment. The first affidavit was sworn to March 11, 1879, in Vermont, and filed April 16, 1879. Neither could come in under this conspiracy anyway. The second was made in Washington, April 26, 1879, and filed the same day, *which is a suspicious circumstance.* The letter dated April 23, 1879, according to the prosecution, purports to transmit an affidavit made on the 26. There is no evidence that the affidavit dated the 26 was inclosed in the letter dated the 23. The affidavit sets forth the number of men and

animals required to run the route on a schedule of fifty hours, three trips a week. There is no evidence as to the character of the paper transmitted, if any was transmitted, nor in fact, is there any evidence that any paper was transmitted with that letter.

Now, on page 804 of the record, Mr. Bliss submitted two papers to Mr. McSweeney, a witness, saying, "I show you two papers pinned together." Who pinned them? I do not know. "One dated April 26, 1879, and the other dated April 24, 1879." The paper dated April 26 is indorsed in the handwriting of William H. Turner. The indorsement on the paper dated April 24 is in the handwriting of Byron C. Coon. This fact shows that the papers that were read by Mr. Bliss as one paper and marked 17 E, were treated by the department as two separate papers received on separate dates, and so marked and so filed, and they were marked at the time they were identified as numbers 17 and 18. Now, the only question is whether the last affidavit was made for the purpose of committing a fraud upon the Government and whether the change in the figures in the last affidavit were intended to or could in any way defraud the Government of the United States.

Now, let us see what it is. Mr. Merrick charges that the second oath was willful perjury. In order to show that this was an honest transaction, and that Mr. Dorsey should be praised instead of blamed, I will call your intention now to the exact state of facts. Now, if I do not make out from this that it was a praiseworthy action instead of perjury, a good, honest action, I will abandon the case. In the first affidavit Dorsey swore that it would require three men and seven animals as the schedule then was, and that for the proposed schedule it would take eleven men and twenty-six animals. Now, three men and seven animals make ten, and eleven men and twenty-six animals make thirty-seven. So that by the first affidavit he swore that it would take three and seven-tenths more animals to carry the mail on the expedited schedule than on the

schedule as it then was, did he not? Three men and seven animals as against eleven men and twenty-six animals it would take three and seven-tenths more animals, consequently you would get for that three and seven-tenths more pay. Now, let us understand that. That is an increase in the ratio of ten to thirty-seven, and if his pay had been calculated on that first affidavit it would have been thirteen thousand four hundred and thirty-three dollars and four cents. But it was not calculated on that. He made another affidavit. Now, the second affidavit said that it would take twenty men and animals instead of ten, as it then was, and for the expedition fifty-four men and animals. Now, the ratio between twenty and fifty-four was two and seven-tenths instead of three and seven-tenths, so that under that second affidavit, which they say was willful and corrupt perjury, he would only get eight thousand four hundred and fifty-seven dollars, and the change of that affidavit, if the amount had been calculated on the first instead of the second, would have cost him for the three years yet remaining of his term fourteen thousand nine hundred and twenty-five dollars and sixty cents, and that change saved, exactly as if they had made the calculation on the other affidavit, about fifteen thousand dollars, and yet they tell me that that was willful and corrupt perjury. There has nothing been shown in the case more perfectly honorable. Nothing shown calculated to put John W. Dorsey in a fairer, in a grander light, than this very affidavit that is charged to have been willful perjury. Do you see? He made the first affidavit, and in it he made a mistake against the Government of fourteen thousand nine hundred and twenty-five dollars, and, then, like an honest man, he corrected it, and for that honest correction he is held up as a perjured scoundrel. It will not do, my friends.

But, as a matter of fact, not one of these affidavits is set out in the indictment, not one charged in the indictment. They are wandering tramps that were picked up as they went along with this case, and have no business here.

In route 38152 he made no affidavit. In route 38113 there is no charge in the indictment that he made any affidavit. In the route 38156 the affidavit was not false. It was charged and was not successfully impeached. In route 40104 the affidavit was never disputed and it was never attacked. In route 40113 the affidavit was not attacked, not a solitary witness was examined. In route 35105 no affidavit was made by Dorsey. In route 38134 there are two more affidavits.

Now let us see. Here is some more fraud. Put it down, 38134—two affidavits— a great fraud. The first affidavit said three men and twelve animals. That made fifteen ; that for the expedition it would take seven men and thirty-eight animals. That made forty-five. In other words the proportion was fifteen to forty-five, just three times as much. Three times fifteen make forty-five. Then he made a second affidavit, filed with a purpose to defraud the Government. Let us see. In the second affidavit he said that it took two men and six animals. That makes eight. That on the expedition it would take six men and eighteen animals. That makes twenty-four. The proportion was eight to twenty-four. Three times eight make twenty-four ; and three times fifteen make forty-five. So that the amount was raised exactly the same to a cent, under the second affidavit that it was under the first, and consequently could not have been made for the purpose of defrauding anybody. Impossible. The proportion of course is the material thing in every affidavit, and it is only by that proportion that you can tell whether they are trying to defraud this Government or not. Suppose that second affidavit had changed the proportion so that he was not to get just the amount of money, then you might say it was a fraud. But it did not change the proportion.

On route 38156 another affidavit is filed and not successfully impeached. I went over that. I have got through with that. That is all there is to it. That is all, that is everything—everything—everything. There is no evidence tending to show that John W. Dorsey ever spoke to Thomas J. Brady. There is

no evidence to show that he ever saw him. There is no evidence to show that he was ever seen in his company; no evidence to show that he ever saw Turner; that he ever heard of Turner; that he ever spoke to Turner; that he ever received a letter from Turner; that he ever wrote anything to him; no evidence as a matter of fact that he ever exchanged a word with these men; no evidence that he ever saw Harvey M. Vaile; that he ever spoke to him. Certainly there is no evidence that he ever conspired with him. No evidence that he ever made an agreement with Thomas J. Brady or with Mr. Turner or with any officer—no agreement of any sort, kind, character, or description at any place, upon any subject, or for any purpose, not the slightest; no evidence that he conspired with anybody; no evidence that he ever received from the United States a solitary dollar, with the exception of three hundred and ninety-two dollars—not the slightest.

There is no evidence that he ever wrote a false communication to the department—nothing of it. There is no evidence that he ever wrote a petition; no evidence that he ever forged one; no evidence that he ever signed anybody's name to one; no evidence that he did anything of the kind or that he ever changed one; no evidence that he ever put a man's name to it that did not live on the route; no evidence that he ever put in a fictitious name; no evidence that he helped to deceive the Postmaster-General—not the slightest. If there is I want somebody just to put their finger upon the evidence. There is no evidence that he ever made false statements at any time. There is no evidence that he ever paid, as I say, a dollar to any official, and no evidence that he ever promised to pay it. All the evidence is that he got three hundred and ninety-two dollars. He made the affidavits in accordance with what he believed to be the truth. The evidence shows that when he made the affidavits on those routes he had no personal interest, that he received not a dollar for making them. He made them because he supposed the contractor or subcontractor had to make them. He made them because he believed them to be

true. He was guided by the little experience he had himself and by the statements made to him by others; and in all this evidence there is not a word, not a line, not a letter tending to show he did a dishonest act, and the jury will bear me out that in the affidavits attacked he was substantially right, while in the first instance he was too high; in others he was too low. But there is no evidence that he deliberately swore to what he believed to be untrue. The proportion sworn to by him has always been substantially correct. In other words, gentlemen, the testimony shows that John W. Dorsey is an honest man, and there is no jury, there never was, there never will be, that will find a man like that guilty upon evidence like this. It never happened; it never will happen.

Now, I come to my other client, Stephen W. Dorsey, and I feel an interest in him. He is my friend. I like him. He is a good man. He has good sense. He is not simply a politician, he is a statesman; and I want you to understand that he never did an act in this case that he did not thoroughly understand as well as any lawyer in this prosecution ever will understand; or as well as any lawyer of the defence ever will understand. He knew exactly his liabilities. He knew exactly his responsibility. He knew exactly what he did and he knew he did only what was right. In the opening of this case Mr. McSweeney made a statement. He told you the exact connection of Dorsey with this matter. He not only told you that, but he told you that Dorsey had lost money on these routes, and that he had never been repaid the money he had advanced, and in that connection he said that he had turned the routes over to James W. Bosler, and the department knew of James W. Bosler because they introduced testimony here that the warrants were paid to James W. Bosler. Mr. McSweeney stated that Bosler controlled the business, and now we are asked by the prosecution, "Why did you not bring James W. Bosler on the stand and show that you had lost money?" I return the compliment and say to them, why did you not bring James W. Bosler on the stand and show that it

was not true that we had lost money, as he kept the books? I ask them that. Why did they not bring James W. Bosler?

Mr. MERRICK. If your Honor please, there is no evidence whatever as to whether S. W. Dorsey lost money on those routes, and the statement of counsel made in the opening, I respectfully submit, cannot be used as evidence by the counsel in the case.

The COURT. Of course it is impossible for me to say after so long a time spent in receiving evidence what evidence has been given on a disputed question. I cannot say from recollection what evidence has been given on this subject, but I understand the remarks now made are not made upon evidence in the case, but in reply to remarks made in the opening in the case.

Mr. INGERSOLL. Partially so.

Mr. MERRICK. The opening by their counsel.

The COURT. By their counsel.

Mr. MERRICK. By their counsel, Mr. McSweeney.

Mr. INGERSOLL. Let me just state it, and the Court will understand it perfectly. Mr. McSweeney, in his opening, said that these routes had been turned over to James W. Bosler; that he received the money and paid it out, and that S. W. Dorsey on these very routes had not made money, but lost money. Very well. But that statement was simply a statement. It was never proved afterwards. The Government said to us, "Why did you not bring James W. Bosler to prove that?"

The COURT. Where did they say that?

Mr. INGERSOLL. They said it in their speeches. Mr. Merrick said it.

Mr. MERRICK. Not to prove as to the money.

Mr. INGERSOLL. Ay, "Why did you not bring James W. Bosler?"

Mr. MERRICK. Yes, but not as to proof of money; but as to other questions in reference to the distribution of routes and the loaning of money by Dorsey, and by Bosler to Dorsey,

and Dorsey's transfer of the routes to Bosler as security for the loan as appeared in Vaile's testimony.

The COURT. I shall not interfere.

Mr. MERRICK. I shall not attempt to arrest the course of counsel unless there is ground for it, and I ask the Court that, there being no evidence of this fact, that the counsel shall not——

Mr. INGERSOLL. [Interposing.] I am going to show there is some evidence.

The COURT. I understand it is a remark in reply to an observation of your own.

Mr. INGERSOLL. That is principally it. Now, they introduced the warrants that had been drawn by the contractors and subcontractors from the Post-Office Department; they proved that these warrants had been paid to James W. Bosler, and that one after the other, hundreds had been assigned to James W. Bosler. Now, then, I say, they say to us, "Why do you not bring in James W. Bosler and prove your innocence?" I say why did you not bring in James W. Bosler and prove our guilt? We opened the door. We told you the name of the witness. We told you that he had taken the routes; that he kept the books; that he disbursed the money, and that we had lost money. Instead of robbing the Government the Government has robbed us; and they say, "Why did you not bring Bosler?" and I say to them, why did you not bring him? They know him, and they know he is a reputable man.

Now, there is another point. I ask you all to remember what was said in the opening, and I understand that a defence is bound by its opening, bound by what it says to the jury. The question is, Has any fact been substantiated in this case that contradicts a statement made in the opening?

The COURT. The defence has no right to avail itself of—

Mr. INGERSOLL. [Interposing.] Of what it says.

The COURT. Of what it says in its opening unless it is followed by evidence.

Mr. INGERSOLL. Certainly not, but it has a right to show that no evidence has been introduced by the Government that touches that opening statement. It has the right to do that, surely.

Now, then, Mr. Boone was the witness for the Government—a smart man. He swore who were interested in the bidding. He told and he positively swore that Dorsey was not interested in these routes. He gave the names of the persons interested, and he swore positively that he was not. Dorsey then, I say, had not the slightest interest. He loaned money, he went security, he assisted in getting sureties on bonds, and you recollect the trouble that they have made about some bonds. Has there any evidence been introduced to show that there was a bad bond? Has any evidence been introduced to show that the name of an insolvent man was put upon any bond as security? Has there been any evidence to show that any action was ever commenced on any of these bonds; any evidence tending to show that every bond was not absolutely good? As a matter of fact, the Government waived all of that. In offering the contract on route 35015, Mr. Merrick made this remark:

"It is offered for the purpose of showing the contract made. The contract itself is not an overt act. That is all right. There is nothing criminal about that."

Good!

Nothing criminal about any contract, gentlemen. You will all admit they had to make the bids, and if they were the lowest bidders it was the duty of the Government to accept the bids and afterwards to make the contracts in accordance with them. There was nothing wrong in that. That is Dorsey's first step. His first step really was an act of kindness. What was the second step? He was unable

to advance any more money. Mr. Peck, Mr. Miner, Mr. Dorsey, and Mr. Boone were unable to advance the money, so Mr. Boone went out and Mr. Vaile came in, and the new partnership agreed to refund this money that had been advanced; that is, the money advanced by the other parties. What one gets another to advance is really advanced by him as long as he is liable for it. Mr. Vaile, a man of large experience and means, was taken in Boone's place. Is there anything suspicious up to this time? That is the only test of this whole question. Is it natural? If it is natural there is no chance for suspicion. After Mr. Vaile came in, a written contract was made on August 16, 1878. There is no conspiracy up to that time. Not the slightest evidence of it; no arrangement with any officers up to that time. Now, under the August contract, Mr. Vaile took the entire business in charge, and he ran it, as I understand, until the first day of April, 1879. No officer had any interest in it then. There was no conspiracy then. Vaile received all the money and paid it out. Here we stand on the first day of April, 1879. Now, what is the history up to this time? That John W. Dorsey, Peck, Miner, and Boone were bidders; that certain routes had been awarded, they had not the money to stock the routes, and that S. W. Dorsey advanced some money and went security; that afterwards Boone went out and Vaile came in, and the contract was made by virtue of which Vaile became the treasurer and knew everybody, and ran the business to the first day of April, 1879. He swears positively that he made no arrangement and that he paid no money. It is also in evidence that in December, 1878, Stephen W. Dorsey and Vaile met for the first time, and met in the German-American Bank for the purpose of settling the claim upon which Dorsey was security, and replacing the notes upon which Dorsey was, by notes of Vaile, Miner & Co. Afterwards these notes were paid by Vaile and the

security of Dorsey released. Now, in April, 1879, a division is made. The contract of August, 1878, was done away with and a division of the routes was made, seventy per cent. being taken by Vaile and Miner and thirty per cent. by John W. Dorsey and Peck. In April, 1879, the parties divided instead of coming together. They do not conspire. They separate. They do not unite. They go asunder. From that moment they agree to have nothing in common. Each man takes his own, and each man attends to his own and does not help anybody else except when they insist that a contractor or subcontractor shall make the affidavit. They made affidavits on the routes on which they were contractors. That is all there is to it up to that time. Then these routes were assigned to Dorsey for the purpose of securing him.

Now, I go to the overt acts charged against Stephen W. Dorsey. Do you know I am delighted to get right to that page of my notes. I am delighted that I now have the opportunity to answer and to answer forever all the infamous things that have been charged against this man. Here we are, before this jury, a jury of his fellow-citizens, a jury that has the courage to do right. I have finally the chance of telling here before men who know whether I am speaking the truth or not, what has been charged against Stephen W. Dorsey and what has been proved against him. Let us examine the overt acts charged. On route 38135 it is charged that Miner, Rerdell and S. W. Dorsey transmitted a false affidavit. The evidence is that the affidavit was made by Miner, not by Dorsey, transmitted by Miner, not by Dorsey, and that it was not transmitted as charged in the indictment, but transmitted on the 18th day of April, 1879. There is no evidence that Dorsey ever heard of that affidavit, that he ever made it, that he ever transmitted it, that he ever saw it, that he ever knew of its existence. That is the first charge. There is not one particle of evidence to show that he ever knew there was such a paper. Upon that written lie, upon

that mistake these infamous charges affecting the character of this man have been circulated over the United States.

What is the next? That he with others filed false petitions. I am telling you now all the charges; every one of them. What is the evidence? Oh, it is splendid to get to the facts. The evidence is that every petition is shown to have been genuine. There is no evidence that he ever filed one or sent one, or asked to have one sent on that route; and every petition is genuine and no charge made except as to one. In one they said the words "quicker time" were inserted; but the very next paragraph asked for quicker time, and nobody pretended that had been inserted. Besides that, it was charged in the indictment to have been filed on the 26th day of June. As a matter of fact, it was filed on the 8th day of May. It was never filed by Stephen W. Dorsey; it was never gotten up by Stephen W. Dorsey. There is no evidence that he ever knew of it or heard of it. Third, that he fraudulently filed a subcontract. Two mistakes and an impossible offence. That ends that route. That is everything on earth in it. I defy any man to make anything more out of it than I have. I have told every word.

The next route is No. 41119. It is charged that Stephen W. Dorsey with others transmitted a false oath. The evidence is that the oath was made by Peck, and it was transmitted by Peck and not by Stephen W. Dorsey. What else? That it is true. There are three mistakes in that charge. They say Dorsey made it. Peck made it. They say Dorsey transmitted it. Peck transmitted it. They say it was false. The evidence shows it true. That is all there is to that route. It is the only charge on that route. No petitions were claimed to be false.

Now we come to route 38145. Let us see if we can do any better on that. The first charge is, that Stephen W. Dorsey fraudulently filed a subcontract. The subcontract was made with Sanderson, Sanderson got his own contract filed. This

charge was copied from the old indictment. It is a mistake and that is all there is to it. These are the charges that have carried sorrow to many hearts. These are the charges that have darkened homes. These are the charges that have filled nights with grief and horror ; every one of them a lie.

The next route is 38156. The first charge is that he transmitted a false oath. The oath was made by John W. Dorsey, and is true. The second charge is of fraudulently filing a subcontract, an impossible offence. That is everything on that route. Absolutely untrue.

Now we come to the next, No. 46217. The charge is filing base petitions. The evidence is that every petition was genuine. Every one. Mr. Bliss said—

"We make no point about increase of trips on this route."

Every petition was for increase of trips. You will see that on record, page 1008. That is the only charge on that route, gentlemen. Utterly false !

Come now to route 38140. Charge : Filing false and forged petitions. Evidence : All the petitions genuine. Second charge : Transmitting a false oath and making it. Evidence : Oath made by John W. Dorsey, and true. That is all there is to that route. If they can rake up any more I want to see it. I have been through this record.

Route 38113. Charge : Fraudulently filing a subcontract. That is all. You cannot fraudulently file a subcontract.

Route 40113. Charge : Filing false and forged petitions. Evidence : Every petition admitted by the Government to be genuine. Good. Second : transmitting a false oath. Evidence : Oath made by John W. Dorsey, and the Government introduced no witness to show that it was false. See how these charges fall. See how they bite the ground. That is all.

I have told you every one in this indictment ; every one. You will hardly believe it. Now let me give you the recapitulation. S. W. Dorsey is charged on eight routes with having transmitted four false oaths.

The evidence is he never made one nor transmitted one, and that the four oaths were all true. On five routes he is charged with having filed false petitions. The evidence is that all the petitions were genuine. None of the petitions charged in the indictment to have been transmitted by him were transmitted by him. He is charged with filing fraudulent subcontracts, and the evidence is that the subcontracts were genuine, and besides that, as I have said a dozen times, it is utterly impossible to fraudulently file a subcontract. Not a single, solitary charge in this indictment against Stephen W. Dorsey has been substantiated. Not one. He has been called a robber, he has been called a thief, but the evidence shows he is an honest man. Not one single thing alleged in that indictment has been substantiated against him, and I defy any human being to point to the evidence that does it. Now think of it. All this charge has been made against that man upon that evidence; no other evidence; not another line so far as the indictment is concerned. What is outside of the indictment? That he wrote two letters, taking possession of routes that had been turned over to him as security, which he had a right to do. What else? That he got up some petitions, or had them gotten up, in the State of Oregon. The man who got them up was brought here as a witness. I believe his name was Wilcox. He swore that everything he did was honest, and that every name to every petition was genuine. Now let us see. Another point has been made upon S. W. Dorsey. I want to read it to you. This is from the argument of Mr. Merrick:

"Peck, John W. Dorsey and Miner, or some other one of Stephen W. Dorsey's friends. Who was making up this conspiracy? Who was gathering around him arms and hands to reach into the public Treasury for his benefit, while his own were apparently unoccupied with pelf? S. W. Dorsey. 'My brother and brother-in-law will go in, and Miner, or if not Miner, then one of my other friends.'"

This is quoted.

"One of S. W. Dorsey's other facile friends. That was in 1877, gentlemen, the morning of this day of fraud and criminality. In that room where Boone and S. W. Dorsey sat arose the sun, and there was marked his course. There was fashioned the duration and the business of that criminal day."

Now, let us see what the evidence is. The object of that speech is to convince you that Dorsey said to Boone. "I will either put in Miner or one of my friends." Do you know that there is not money enough in the Treasury of the United States, there is not gold and silver enough in the veins of this earth to tempt me to misstate evidence when a man is on trial for his liberty or his life. Let us see what the evidence is:

"Q. Who else besides his brother-in-law and brother?—A. I could not say positively whether Mr. Miner's name was mentioned. He either mentioned his name or a friend of his from Sandusky, Ohio."

Now, I submit to you, gentlemen, what does that mean? Mr. Boone, in effect, says, "He told me either it was Miner or a friend of his from Sandusky. That is, he either described Miner by his name or he described him as a friend of his from Sandusky." Then there was objection made, and after that comes another question:

"Q. Was anything said of Mr. Miner's coming to Washington?—A. I could not say whether his name was mentioned or a friend of his; a personal friend."

What does that mean? Boone cannot remember whether he called him Miner or called him a friend of his from Sandusky. What else?

"A. There was to be nobody that I understood outside of the parties I spoke of.

"Q. You and John W. Dorsey and Peck?—A. And Mr. Miner."

"Q. Or one of his friends?—A. Or Mr. Dorsey's friend. The arrangement made was not made until they came here. It was only to prepare the necessary blanks and papers pending their coming because the time was getting short, and it was necessary to get the information to bid upon. Nothing was said about any interest at all until after they came here, and then there was a partnership entered into."

Now, I ask you, gentlemen of the jury, what is the meaning of that testimony. The meaning is simply this: Boone could not remember whether he mentioned Miner's name or called him a friend of his from Sandusky, yet the object has been to make you believe that the testimony was that S. W. Dorsey said, "I will either have Miner or I will get another friend of mine." Dorsey had no interest in it, not the interest of one cent, not the interest of one dollar, directly, indirectly, or any other way. He had no interest in having a friend of his. All that Mr. Boone said is that Mr. Dorsey either called this man Miner or described him as a friend from Sandusky, Ohio. The evidence is that Mr. Miner did come, and the evidence is that the arrangement was made. What else is there outside in this case against Stephen W. Dorsey? I ask you to put your hand upon it. I ask anybody to point it out. What other suspicious circumstance is there? I want you to understand that all the suspicious circumstances in the world are good for nothing. All the evidence on earth tending to show a thing does not show it. Anything that only tends that way never gets there; never.

You cannot infer a conspiracy. Unless you have the facts proved, you cannot infer the fact and then infer the conspiracy. There has not been—I want to say it again—there has not been a solitary fraudulent act proven against Stephen W. Dorsey. They have not done it and they cannot do it. All I ask of you, gentlemen, is to find a verdict in accordance with this testimony.

May it please the Court, it appears from the evidence in this case, I think the evidence of Mr. James, that Stephen W. Dorsey at one time, about sixteen or seventeen months ago, made a statement in writing of his connection with all these routes. That statement he gave to the Attorney-General and the Postmaster-General. There is no evidence of what was in that statement. The only evidence is that

such a statement was made, embracing his connection with these routes.

The COURT. You offered to prove that.

Mr. INGERSOLL. Oh, no. The reason it was established was I wanted to show whether that statement was made before or after Mr. Rerdell made a statement. The fact simply appears that he made a statement.

The COURT. You offered to prove the fact.

Mr. INGERSOLL. I do not remember offering to prove it. I proved it.

The COURT. If it was not proven——

Mr. INGERSOLL. [Interposing.] I did prove it as a fact.

The COURT. That he made a statement.

Mr. INGERSOLL. Yes, sir. Right here it is [taking up the record].

The COURT. Oh, well, you cannot base any remarks upon that.

Mr. INGERSOLL. Let me read what the evidence says:

"Q. Was this statement of Rerdell's made to you after you had received the statements of S. W. Dorsey as to his connection with all these entire routes or with this entire business?

"The WITNESS. To what statement do you refer?

"Mr. INGERSOLL. To the statement that was made in writing and given to you and the attorney-general by ex-Senator S. W. Dorsey?

"A. It must have been after that.

"Q. You mean Rerdell's statement was after that?—A. Yes, sir.

"Q. Did you ever see that statement made by Senator Dorsey?—A. It was referred to the attorney-general.

"Q. Did you ever see it?—A. Certainly.

"Q. Do you know where it now is?—A. I do not."

I am not going to say a word about what was in that statement, but the Court will see that that has a direct bearing upon their action with regard to Rerdell's statement whether it was made before or after, which I will endeavor to show, and the only point that I wanted to make upon that statement now, was that the Government has not endeavored to prove that anything in that state-

ment was inconsistent with the evidence in this case. I am not going to say what the statement was; simply that he made a statement, and it follows as naturally as night follows morning, and morning follows night, that if that statement had been incorrect it would have been brought forward. That is all.

The COURT. For anything the Court knows it might have been a confession. We do not know anything about it.

Mr. INGERSOLL. If it had been a confession it would have been here. That is the point I make. If there had been in that anything inconsistent with the testimony it would have been here.

The COURT. Probably it would.

Mr. INGERSOLL. Yes, sir; that is my point.

The COURT. When a man is charged with crime no man has a right to say that because he did not deny it that is evidence of his guilt.

Mr. INGERSOLL. No, sir; and no man has a right to say that because he did deny it is evidence of his innocence.

The COURT. It is not evidence either way.

Mr. INGERSOLL. It is not evidence either way, and if I am charged with a crime and I make a written statement to the Government of my entire connection with that thing, and they go on and examine it for one year and finally finish the trial without showing that that statement was incorrect, it is a moral demonstration that my statement agreed with the testimony.

The COURT. On the principle, I suppose, of an account rendered and no objection made?

Mr. INGERSOLL. Good. That is a good idea.

The COURT. I do not see anything in that.

Mr. INGERSOLL. I see a great deal in it, and it is a question whether the jury can see anything in it.

The COURT. It is a question whether the Court too——

Mr. INGERSOLL. [Interposing.] Very well.

The COURT. [Continuing.] Whether the Court is going to allow an argument to be based upon a mere vacuum—wind, nothing.

Mr. INGERSOLL. That would seem to be stealing the foundation of this case. [Laughter, and cries of "Silence" from the bailiffs.] We will consider the argument made to the Court, and not to the jury.

The next question, then, is what is the *corpus delicti;* that is, in a case of conspiracy? I do not believe the combination to be the *corpus delicti*—the mere association. It may be the *corpus*, but it is not the *delicti*, and under the law there must not only be a conspiracy, as I understand it, but also an overt act done by one of the conspirators to accomplish the object of the conspiracy. So that the conspiracy with the fraudulent purpose and the overt act constitute the *corpus delicti.* Now, I read from Best on Presumptions, page 279:

"The *corpus delicti*, the body of an offence, is the fact of its actually having been committed."

The dead body in a murder case is not the *corpus delicti.* It is the corpse and nothing more. It must be followed by evidence that murder was committed.

"The *corpus delicti* is the body, substance or foundation of the offence. It is the substantial and fundamental fact of its having been committed."

1 Haggard, 105, opinion by Lord Stowell.

I now refer you to Peoples *vs.* Powell, 63, N. Y., page 92. It seems that the defendants in this case were commissioners of charities of the county of Kings, and they were indicted for conspiring together to buy supplies contrary to law and without duly advertising. Their defence was that they were not aware that such a law existed; that they were ignorant of the law. The court below thought that made no difference. The court above said before they could be guilty of this crime there must be the intention to commit the crime, and this language is used:

"The agreement must have been entered into with an evil purpose, as distinguished from a purpose simply to do the act prohibited in ignorance of the prohibition. This is implied in the meaning of the word conspiracy. Mere concert is not conspiracy."

So combination is not conspiracy; partnership is not conspiracy; neither is it the *corpus delicti* of conspiracy. There must be the evil intent; there must be the wicked conspiracy not only, but there must be one at least overt act done in pursuance of it before the *corpus delicti* can be established.

"The actual criminal intention belongs to the definition of the offence and must be shown to justify a conviction for conspiracy. The offence originally consisted in a combination to convict an innocent person by perversion of the law. It has since been greatly extended, but I am of opinion that proof that the defendants agreed to do an act prohibited by statute, followed by overt acts in furtherance of the agreed purpose, did not conclusively establish that they were guilty of the crime of conspiracy."

It would be hard to find a stronger case, in my judgment, than that. Although they agreed to violate a statute—they agreed to buy supplies without complying with the statute by advertising—they claimed they were in ignorance of it, and the question was whether they were guilty of conspiracy, having no intent to do an illegal act, and the court of appeals decided that that verdict could not stand.

The COURT. Because the court below had instructed the jury that whether what they did was done in ignorance or with knowledge it made no difference.

Mr. INGERSOLL. Certainly; it made no difference. Everybody is supposed to know the law.

Now, the next point is, and great weight has been put upon it, gentlemen, that concurrence of action establishes conspiracy; that if one does a part and another another part and finally the culmination comes, that is absolute evidence, or in other words, an *inference*. Admitting, now, that they were perfectly honest, if any of these parties made a bid,

that bid had to be accepted by the Government. They had to act together. The department and the man had to act together to have the bid accepted. The department and the man had to act together to make the contract. The department and the man had to act together to get the pay, and no matter how perfectly honest the transaction was they had to act together from the first step to the payment of the last dollar.

Now, in a business where they do have to act together, where one necessarily does one thing, and the other necessarily does another, the fact that that happens does not even tend to prove that there is any fraud. Upon this concurrence of action I refer to the case of Metcalfe against O'Connor and wife, in Little's Select Cases, 497. One of the men confessed that a large party went to the house where there was a disturbance and where they tried to take by force a boy from the custody of a man and woman. Now, the fact that these men did go the house, the fact that they were there at the time this happened, and the fact that one of the conspirators or one of the trespassers had confessed that he went there and that the other went with him for that purpose, the court decides that you cannot infer the purpose of these men from the statement of the other; neither can you infer it from the fact that they were there. You must find out for what purpose they were there by ascertaining what they did and when they were there, and that concurrence in actions shows nothing.

The COURT. Did you not say that the decision there was that the conspiracy might be inferred from the combination to do the act?

Mr. INGERSOLL. I will just read it and then there will be no guessing about it:

"This is a writ of error prosecuted by the defendants to a judgment for the plaintiffs in an action of trespass for an assault and

battery alleged to have been committed upon the plaintiff Ann, the wife of the other plaintiff.

"We are of the opinion that the circuit court erred in refusing to instruct the jury, at the instance of the defendants, to find for all of them, except the defendant Metcalfe. He is the only one of the defendants proven to have touched the defendant Ann, and against the other defendants there is no evidence conducing in the slightest degree to prove them guilty of committing any assault or battery upon her, or of any intention to do so.

"It is true that it was proved that the other defendants confessed that they were at the house of Connor when the assault and battery charged is alleged to have been committed, and it was also proved that Metcalfe confessed that he and the other defendants had gone there for the purpose of taking from Connor by force an idiot boy whom he had in his custody. But the circumstances of the other defendants being at Connor's house, there is no evidence they were there for any unlawful purpose; nor can it of itself be sufficient to render them responsible for any act done by Metcalfe in which they did not participate; and the confessions of Metcalfe are certainly not legitimate evidence against the others to prove the unlawful purpose with which they went to Connor's, and thereby to charge them with the consequences of his act."

Now, to all appearances, they went there together; to all appearances, they went there for the one purpose, and Metcalfe, the man who really did the mischief, confessed that they all went there for the one purpose, but the court held that that was not sufficient.

"Where several agree or conspire to commit a trespass, or for any other unlawful purpose, they will, no doubt, all be liable for the act of any one of them done in execution of the unlawful purpose; and when the agreement or conspiracy is first proved by other evidence, the confession of one of them will be admissible evidence against the others. But it is well settled that the confessions of one person cannot be admitted against the others to prove that they had conspired with him for an unlawful purpose."

Now, the next evidence that I wish to allude to, gentlemen, is the evidence of Mr. Walsh, and I will only say a few words, because it has been examined and it has been ground to powder. Everything in this world is true in proportion that it agrees with human experience; and you can safely say that everything is false or the probability is that it

false in proportion that it is not in accordance with human experience. Other things being equal, we act substantially alike.

Now, when anything really happens everything else that ever happened will fit it. You take a spar crystal, I do not care how far north you get it, and another spar crystal, no matter how far south you get it, and put them together and they will exactly fit each other—exactly. The slope is precisely the same. And it is so with facts. Every fact in this world will fit every other fact—just exactly. Not a hair's difference. But a lie will not fit anything but another lie made for the purpose—never. It never did. And finally, there has to come a place where this lie, or the lie made for the sake of it, has to join some truth, and there is a bad joint always. And that is the only way to examine testimony. Is it natural? Does it accord with what we know? Does it accord with our experience?

Now, take the testimony of Mr. Walsh, and I find some improbabilities in it. Just let me read you a few:

1. Bankers and brokers do not, as a rule, loan money without taking at least a note. That is my experience. And the poorer this broker is, the less money he has, the more security he wants. He not only wants an indorser but he would like to have a mortgage on your life, liberty, and pursuit of happiness. That is the first improbability.

2. Bankers and brokers do not, as a rule, take notes that bear no interest, or in which the interest is not stated. People who live on interest find it always to their interest to have the interest mentioned—always. I never got a cent of a banker that I did not pay interest, and generally in advance.

3. Bankers and brokers do not, as a rule, take notes payable on demand, because such notes are not negotiable.

4. It is hardly probable that when a banker and broker

holds the note of another for twelve thousand dollars—the note being unpaid—he would loan thirteen thousand five hundred dollars more, taking another note on demand in which the rate of interest was not stated.

5. It is still more improbable that the same banker and broker, with a note for twelve thousand dollars and one for thirteen thousand five hundred dollars, being unpaid, would loan five thousand four hundred dollars more without taking any note or asking any security.

6. When such banker and broker called upon his debtor for a settlement, and exhibited the two notes, and thereupon his debtor took the two notes and put them in his pocket, it is highly improbable that the banker and broker would submit to such treatment.

7. It is improbable that such banker and broker would afterwards commence suit to recover the money, without mentioning to his attorney, in fact, that the notes had been taken away from him.

8. It is also improbable that the banker and broker would commence another suit for the same subject-matter and still keep the fact that the notes had been taken from him by violence, a secret from his attorney.

9. If Mr. Brady took the notes by force, it is improbable that he would immediately put himself in the power of the man he had robbed, by stating to him that he, Brady, was in the habit of taking bribes.

10. It is impossible that Mr. Brady could, in fact, have done this, which amounted to saying this: "I have taken twenty-five thousand five hundred dollars from you; of course, you are my enemy; of course, you will endeavor to be revenged, and I now point out the way in which you can have your revenge. I am Second Assistant Postmaster-General; I award contracts, increases, and expedition, and upon these I receive twenty per cent. as a bribe. I am a bribe-taker; I am a thief; make the most of it. I

give you these facts in order that I may put a weapon in your hands with which you can obtain your revenge."

There are also other improbabilities connected with this testimony.

If Mr. Brady was receiving twenty per cent. of all increases and expeditions, amounting to hundreds of thousands of dollars per annum, it is not easy to see why he would be borrowing money from Mr. Walsh.

Now, if that story is true, boil it down and it is this, because if he got this twenty per cent. from everybody he had oceans of money—boil it all down and it is this: A rich man borrows without necessity and a poor banker loans without security. These twin improbabilities would breed suspicion in credulity itself. No man ever believed that story, no man ever will. There is something wrong about it somewhere, unnatural, improbable, and it is for you to say, gentlemen, whether it is true or not, not for me. What is the effect of that testimony? So far as my clients are concerned it is admitted, I believe, by the prosecution—it was so stated, I believe, by his Honor from the bench—that it could not by any possibility affect any defendant except Mr. Brady, and the question now is, can it even affect him? I call the attention of the Court to 40th N. Y., page 228. I give the page from which I read:

"To make such admissions or declarations competent evidence, it must stand as a fact in the cause, admitted or proved, that the assignor or assignees were in a conspiracy to defraud the creditors. If that fact exist, then the acts and declarations of either, made in execution of the common purpose, and in aid of its fulfillment, are competent against either of them. The principle of its admissibility *assumes that fact.*"

That the conspiracy has been established.

"In case of conspiracy, where the combination is proved, the acts and declarations of the conspirators are not received as evidence of that fact, but to show what was done, the means employed, the particular design in respect to the parties to be affected or wronged, and generally those details which, assuming the combination and the illegal purpose, unfold its extent, scope, and influence either upon

the public or the individuals who suffer from the wrong, or show the execution of the illegal design. But when the issue is simply and only, was there a conspiracy to defraud, these declarations do not become evidence to establish it."

"So far then, as the admission of the evidence in this case, of declarations, subsequent to the assignment, is sought to be sustained as evidence of the common fraud, on the ground of conspiracy, the argument wholly fails. A conspiracy cannot be proved against three by evidence that one admitted it, nor against assignees by proof that the assignor admitted it; it is a fact that must be proved by evidence, the competency of which does not depend upon an assumption that it exists."

So to the same point is the case of Cowles against Coe, 21st Connecticut, 220. I will read that portion of the syllabus that conveys the idea:

"To prove the alleged conspiracy between the defendant and G., the plaintiff offered the deposition of R., stating declarations made by G. to R., while G. was engaged in purchasing goods of him, on credit, and relative to G.'s responsibility and means of obtaining money through the defendant's aid; these declarations were objected to, not on the ground that the conspiracy had not been sufficiently proved, but because the defendant was not present when they were made; it was held that they were admissible, within the rule regarding declarations made by a conspirator in furtherance of the common object."

Now, let us see what the court says about it:

"The remaining question is, whether the declarations of Gale to Edmund Curtiss and William Ives were properly received. These declarations were not offered as in any way tending to prove the combination claimed. The motion shows that they were offered and received after the plaintiff's evidence on that subject had been introduced. Had they been admitted for that purpose, or if, under the circumstances, they could have had any influence with the jury on that point, we should feel bound to advise a new trial on this account."

All that I have said in respect to Walsh applies to what is known or what is called the confession of Rerdell. It was admitted by the prosecution that not one word said by him could bind any other defendant in the case. But, gentlemen, is there enough even to bind him? Did he confess that he was guilty of the conspiracy set forth in

this indictment? And I want to make one other point. In this case there must be not only a conspiracy, but an overt act, and no man can confess himself into it without confessing that he was a conspirator, and that he knew that an overt act was to be done; because it takes that conspiracy and the overt act to make the offence. What overt act did Rerdell confess that he was guilty of—what overt act charged in this indictment? One. Filing a subcontract; and by no earthly method, by no earthly reasoning can you come to the conclusion that that could carry it into conspiracy. He must have confessed that he was guilty according to the scheme, according to the indictment set forth, and in no other way. That indictment says that the money was to be divided, that it was for the mutual benefit of certain persons. Unless that has been substantiated this case falls. According to the case of the King against Pomall the scheme of the indictment must be established, otherwise the case goes. In that case they charged it was one way, and they proved it was that way, and one of the defendants did not understand it that way and he was acquitted. Now, suppose they had not proved the scheme as they charged it, then all would have been acquitted, and unless the jury believe beyond a reasonable doubt, from the evidence that the scheme set forth in the indictment here was the scheme, then they must find everybody not guilty. There is no other way.

What is the next argument? The next argument is extravagance. What is extravagance? If I pay more for a thing than it is worth that is extravagance. If I buy a thing that I do not want, that is extravagance, and if I do this knowing it to be wrong, if I do this understanding that I am to have a part of the price, that is bribery, that is corruption, that is rascality. Nobody disputes that. How do you know that a thing is extravagant unless you know the price of it? For instance, an army officer is charged

with extravagance in buying corn upon the plains at five dollars a bushel. How do you prove it is extravagance? You must prove that he could have obtained it for less or that there was a cheaper substitute that he should have obtained. How are you going to prove that too much was paid for carrying the mail upon these routes? Only by showing that it could have been carried for less. What witness was before this jury fixing the price? How are we to establish the fact that it was extravagance? We must show that it could have been obtained for less money. What witness came here and swore that he would carry it for less? And would it be fair to have the entire case decided upon one route when it is in evidence that my clients had thirty per cent. of one hundred and twenty-six routes? Would it be fair to decide the question whether they had made or lost money on one route? Your experience tells you that upon one route they might make a large sum of money and upon several other routes lose largely. A man who has bid for one hundred routes takes into view the average and says "upon some I shall lose and upon others I shall make." How are you to find that this was extravagance unless you know what it could have been done for? They may say that they subcontracted some of the routes for much less. Yes; but what did they do with the rest of them? I might take a contract to build a dozen houses in this city, and on the first house make ten thousand dollars clear, and on the balance I might lose twenty-five thousand dollars. You have a right to take these things and to average them. When a man takes a contract he takes into consideration the chances that he must run in that new and wild country. It takes work to carry this mail. You ought to be there sometimes in the winter when the wind comes down with an unbroken sweep of three or four thousand miles, and then tell me what you think it is worth to carry the mail. All these

things must be taken into consideration. Another thing: You must remember that every one of these routes was established by Congress. Congress first said, "Here shall be a route; here the mail shall be carried." It was the business then, I believe, of the First Assistant Postmaster-General to name the offices, and the Second Assistant to put on the service. Take that into consideration. Every one of these routes was established by Congress. Take another thing into consideration: That the increase of service and expedition was asked for, petitioned for, begged for, and urged by the members of both houses of Congress, and according to that book, which I believe is in evidence, a majority of both houses of Congress asked, recommended, and urged increase of service and expedition upon some of the nineteen routes in this indictment.

The COURT. What evidence do you refer to?

Mr. INGERSOLL. I refer to the Star Route investigation in Congress.

The COURT. That record is not in evidence.

Mr. INGERSOLL. I thought that was in evidence.

The COURT. No, sir.

Mr. INGERSOLL. It was used as if it was in evidence. I saw people reading from it, and supposed it was in evidence.

The COURT. It is not in evidence.

Mr. INGERSOLL. Well, we will leave that out. Now, upon these nineteen routes—this is in evidence—increase and expedition of service were recommended by such Senators as Booth, Farley, Slater, Grover, Chaffee, Chilcott, Saunders, and by the present Secretary of the Interior, Henry M. Teller, and by such members of Congress as Whiteaker, Page, Luttrell, Pacheco, Berry, Belford, Bingham, chairman of the postoffice committee, by Stevens of Arizona, a delegate, and by Maginnis of Montana, and Kidder of Dakota, by Generals Sherman, Terry, Miles,

Hatch and Wilcox In addition to these, recommendations were made and read by judges of courts, by district attorneys, by governors of Territories, by governors of States, and by members of State Legislatures, by colonels, by majors, by captains, and by hundreds and hundreds of good, reputable, honest citizens. They were the ones to decide as a matter of fact whether this increase was or was not necessary.

I believe in carrying the mails. I believe in the diffusion of intelligence. I believe the men in Colorado or Wyoming, or any other Territory, that are engaged in digging gold or silver from the earth, or any other pursuits, have just as much right, in the language of Henry M. Teller, to their mail as any gentleman has to his in the city of New York. We are a nation that believes in intelligence.

We believe in daily mail. That is about the only blessing we get from the General Government, excepting the privilege of paying taxes. Free mail, substantially free, is a blessing.

Now, there is another argument which has been used: *Productiveness;* but that has been so perfectly answered that I allude to it only for one purpose. How would the attorneys for the Government in this case like to have their fees settled upon that basis? PRODUCTIVENESS. Is it possible that this Government cannot afford to carry the mail? Is it possible that the pioneer can get beyond the Government? Is is possible that we are not willing to carry letters and papers to the men that make new Territories and new States and put new stars upon our flag? I have heard all I wish on the subject of productiveness.

Now, gentlemen, that is all the evidence there is in this case, that I have heard. What kind of evidence must we have in a conspiracy case? You have been told during this trial that it is very hard to get evidence in a conspiracy case, and therefore you must be economical enough to put

up with a little. They tell you that this is a very peculiar offence, and people are very secret about it. Well, they are secret about most offences. Very few people steal in public. Very few commit offences who expect to be discovered. I know of no difference between this offence and any other. You have got to prove it. No matter how hard it is to prove you must prove it. It is harder to convict a man without testimony, or should be, than to produce testimony to prove it if he is guilty. All these crimes, of course, are committed in secret. That is always the way. But you must prove them. There is no pretence here that there is any direct evidence, any evidence of a meeting, any evidence of agreement, any evidence of an understanding. It is all circumstantial. I lay down these two propositions:

"The hypothesis of guilt must flow naturally from the facts proved, and be consistent, not with some of the facts, not with a majority of the facts, but with every fact."

Let me read that again:

"*The hypothesis of guilt must flow naturally from the facts proved, and must be consistent with them; not some of them, not the majority of them, but all of them.*"

The second proposition is:

"The evidence must be such as to exclude every single reasonable hypothesis except that of the guilt of the defendant. In other words, all the facts proved must be consistent with and point to the guilt of the defendants not only, but every fact must be inconsistent with their innocence."

That is the law, and has been since man spoke Anglo-Saxon. Let me read you that last proposition again. I like to read it:

"*The evidence must be such as to exclude every reasonable hypothesis except that of the guilt of the defendants. In other words, all the facts proved must be consistent with and point to the guilt of the defendants not only, but they must be inconsistent, and every fact must be inconsistent with their innocence.*"

Now, just apply that law to the case of John W. Dorsey. Apply that law to the case of Stephen W. Dorsey. Let me

read further. I read now from 1 Bishop's Criminal Procedure, paragraph 1077:

"It matters not how clearly the circumstances point to guilt, still, if they are reasonably explainable on a theory which excludes guilt, they cannot satisfy the jury beyond reasonable doubt that the defendants are guilty, and hence they will be insufficient."

Just apply that to the case of Stephen W. Dorsey and John W. Dorsey. I would be willing that this jury should render a verdict with that changed. Change it. You are to find guilty if you have the slightest doubt of innocence. Even under that rule you could not find a verdict of guilty against John W. or Stephen W. Dorsey. If the rule were that you are to find guilty if you have a doubt as to innocence you could not do it; how much less when the rule is that you must have no doubt as to their guilt. The proposition is preposterous and I will not insult your intelligence by arguing it any further.

Now, then, there is another thing I want to keep before you. When a man has a little suspicion in his mind he tortures everything; he tortures the most innocent actions into the evidence of crime. Suspicion is a kind of intellectual dye that colors every thought that comes in contact with it. I remember I once had a conversation with Surgeon-General Hammond, in which he went on to state that he thought many people were confined in asylums, charged with insanity, who were perfectly sane. I asked him how he accounted for it. Said he, "Physicians are sent for to examine the man, and they are told before they get to him that he is crazy; therefore, the moment they look upon him they are hunting for insane acts and not sane acts; they are looking not to see how naturally he acts, but how unnaturally he acts." They are poisoned with the suspicion that he is insane, and if he coughs twice, or if he gets up and walks about uneasily—*his mind is a little unsettled; something wrong!* If he suddenly gets angry—SURE THING! When a man believes himself to be

or knows himself to be sane, and is charged with insanity, the very warmth, the very heat of his denial will convince thousands of people that he is insane. He suddenly finds himself insecure, and the very insecurity that he feels makes him act strangely. He finds in a moment that explanation only complicates. He finds that his denial is worthless; that his friends are suspicious, and that under pretence of his own good he is to be seized and incarcerated. Many a man as sane as you or I has under such circumstances gone to madness. It is a hard thing to explain. The more you talk about it the more outsiders having a suspicion are convinced that you are insane. It is much the same way when a man is charged with crime. It is heralded through all the papers, "this man is a robber and a thief." Why do they put it in the papers? Put anything good in a paper about Mr. Smith, and Mr. Smith is the only man who will buy it. Put in something bad about Mr. Smith and they will have to run the press nights to supply his neighbors with copies. The bad sells. The good does not. Then you must remember another thing: That these papers are large; some of them several hundred columns, for all I know—sixty or a hundred. Just imagine the pains it would take and the money it would cost to get facts enough to fill a paper like that. Economy will not permit of it. They publish what they imagine they can sell. As a rule, people would rather hear something bad than something good. It is a splendid certificate to our race that rascality is still considered news. If they only put in honest actions as news it would be a certificate that honesty was rare; but as long as they publish the bad as news it is a certificate that the majority of mankind is still good.

Now, to be charged with a crime and to be suddenly deserted by your friends, and to know that you are absolutely innocent, is almost enough to drive the sanest man

mad. I want you to think what these defendants have suffered in these long months. If the men who started this prosecution, if the men who originally poisoned the press of the country, feel that they have been rewarded simply because innocent men have suffered agony, let them so feel. I do not envy them their feelings.

There is another thing, gentlemen: The prosecution have endeavored to terrorize this jury. The effort has been deliberately made to terrorize you and every one of you. It was plainly intimated by Mr. Ker that this jury had been touched, and that if you failed to convict, you would be suspected of having been bribed. That was an effort to terrorize you, and the foundation of that argument was a belief in your moral cowardice. No man would have made it to you unless he believed at heart you were cowards. What does that argument mean? I cannot say whether you will be suspected or not; but, in my opinion, a juror in the discharge of his duty has no right to think of any consequence personal to himself. That is the beauty of doing right. You need not think of anything else. The future will take care of itself. I do not agree with the suggestion that it is better that you should be applauded for a crime than blamed for a virtue. Suppose you should gain the applause of the whole United States by giving a false verdict; how would the echo of that applause strike your heart? I do not believe that it is wiser to preserve the appearance of being honest than to be honest with the appearance against you. I would rather be absolutely honest, and have everybody in the world think I was dishonest, than to be dishonest and have the whole world believe in my honesty. You see you have got to stay with yourself all the time. You have to be your own company, and to be compelled to know that your company is dishonest, that your company is infamous, is not pleasant. I would rather know I was

honest and have the whole world put upon the forehead of my reputation the brand of rascality.

You were also told that the people generally have anticipated your verdict.

That is simply an effort to terrorize you, so that you will say, "If the people think that way, of course we must think that way. No matter about the evidence. No matter if we have sworn to do justice. We will all try and be popular." You were told in effect that the people were expecting a conviction, and the only inference is that you ought not to disappoint the public, and that it is your duty to piece and patch the testimony and violate your oath, rather than to disappoint the general expectation. Mr. Merrick told you you were trying these defendants, but that the people of the whole country were trying you. What was the object of that statement? Simply to terrorize this jury. What was the basis of that statement? Why, that not one of you have got the pluck to do right. It was not a compliment, gentlemen. It was intended for one, no doubt, but when you see where it was born, it becomes an insult. I do not believe you are going to care what the people say, or whether the people expect a verdict of guilty, or not. You have been told that they do. I might with equal propriety tell you that they do not. I might with equal propriety say there is not a man in this court-house who expects a verdict of guilty. With equal propriety I might say, and will say, that there is not a man on this jury who expects there will be a verdict of guilty. But what has that to do with us?

Try this case according to the evidence; and if you know that every man, woman, and child in the United States want an acquittal, and you are satisfied of the guilt of the defendants, it is your duty to find them guilty.

If I were on the jury I would, in the language of the greatest man that ever trod this earth—

> Strip myself to death, as to a bed
> That longing have been sick for,

before I would give a false verdict.

Again, Mr. Merrick said, after having stated in effect that a majority of the people were convinced of the guilt of the defendants, that the majority of the men of the United States do not often think wrong. What was the object? To terrorize you. That is all. This verdict is to be carried by universal suffrage; you are to let the men who are not on oath decide for the men who are; to let the men who have not heard the testimony give the verdict of the men who have heard the testimony. What else? Again the same gentleman said:

"There is to be a verdict, a verdict of the people for or against us."

What is the object? To frighten you. Let the people have their verdict; you must have yours. If your verdict is founded on the evidence it will be upheld by every honest man in the world who knows the evidence. You need certainly to place very little value upon the opinion of those who do not know the evidence. Mr. Merrick also suggested—I will hardly put it that way—he was brave enough to hope that you have not been bribed. Brave enough to hope that! All this, gentlemen, is done simply for the purpose of terrorizing you. I tell you to find a verdict according to the evidence, no matter whom it hits, no matter whom it destroys, no matter whom it kills. Save your own consciences alive. Your verdict must rest on the evidence that has been introduced, and all else must be thrown aside, disregarded, like forgotten dreams. All that you have read, all the press has printed, must find no lodgment in your brains. You must regard them no more than you would the noises of animals made in sleep. You must stand by the testimony. You must stand by the law that the Court gives you. That is all we ask. These

articles in the newspapers were not printed in the hope that justice might be done. They were printed in the hope that you may be influenced to disregard the evidence, in the hope that finally slander might be justified by your verdict. Gentlemen, you ought to remember that in this case you are absolutely supreme. You have nothing to do with the supposed desires of any men, or the supposed desires of any department, or the supposed desires of any Government, or the supposed desires of any President, or the supposed desires of the public. You have nothing to do with those things. You have to do only with the evidence. Here all power is powerless except your own. Position is naught. If the defendants are guilty, and the evidence convinces you that they are, your verdict must be in accordance with the evidence. You have no right to take into consideration the consequences. When you are asked to find a verdict contrary to the evidence, when you are asked to piece out the testimony with your suspicions, then you are bound to take into consideration all the consequences. When appeals are made to your prejudice and to your fears, then the consequences should rise like mountains before you. Then you should think of the lives you are asked to wreck, of the homes your verdict would darken, of the hearts it would desolate, of the cheeks it would wet with tears, and of the reputations it would blast and blacken, of the wives it would worse than widow, and of the children it would more than orphan. When you are asked to find a false verdict think of these consesequences. When you are asked to please the public think of these consequences. When you are asked to please the press think of these consequences. When you are asked to act from fear, hatred, prejudice, malice, or cowardice think then of these consequences. But whenever you do right, consequences are nothing to you, because you are not responsible for them. Whoever does right clothes

himself in a suit of armor that the arrows of consequences can never penetrate. When you do wrong you are responsible for all the consequences, to the last sigh and the last tear. If you do right nature is responsible. If you do wrong you are responsible.

You were told, too, by Mr. Merrick that you should have no sympathy; that you should be like icicles; that you should be godlike. A cool conception of deity! In that connection this heartless language, as it appears to me, was used:

"Man when he undertakes to judge his brother-man undertakes to perform the highest duty given to humanity."

Good!

He should perform that duty without fear, without prejudice, without hatred, and without malice. He should perform that duty honestly, grandly, nobly.

I read on:

"Inclosed within the jury-box or on the bench he is separated from the great mass of mankind—"

Then you should not pay any attention to the opinion of the public. If you are separated you should not be dominated by the press. If you are separated you should not be disturbed by the desires of anybody. But he continues:

"and sentiments of brotherhood die away."

About that time you would be nice men:

"Standing above humanity and nearest God he looks down upon his fellow, and judges them without any reference to the sorrow his judgment may bring."

That is not my doctrine. The higher you get in the scale of being, the grander, the nobler, and the tenderer you will become. Kindness is always an evidence of greatness. Malice is the property of small souls. Whoever allows the feeling of brotherhood to die in his heart becomes a wild beast. You know it and so do I:

"Not the king's crown, nor the deputed sword,
The marshal's truncheon, nor the judge's robe,
Become them with one-half so good a grace as mercy does."

And yet the only mercy we ask in this case, gentlemen, is the mercy of an honest verdict. That is all.

I appeal to you for my clients, because the evidence shows that they are honest men. I appeal to you for my client, Stephen W. Dorsey, because the evidence shows that he is a man, a man with an intellectual horizon and a mental sky, a man of genius, generous, and honest. And yet this prosecution, this Government, these attorneys representing the majesty of the Republic, representing the only real Republic that ever existed, have asked you, gentlemen of the jury, not only to violate the law of the land, they have asked you to violate the law of nature. They have maligned mercy. They have laughed at mercy. They have trampled upon the holiest human ties, and they have even made light of the fact that a wife in this trial has sat by her husband's side. Think of it.

There is a painting in the Louvre, a painting of desolation, of despair and love. It represents the night of the crucifixion. The world is represented in shadow. The stars are dead, and yet in the darkness is seen a kneeling form. It is Mary Magdalene with loving lips and hands pressed against the bleeding feet of Christ. The skies were never dark enough nor starless enough; the storm was never fierce enough nor wild enough, the quick bolts of heaven were never lurid enough, and arrows of slander never flew thick enough to drive a noble woman from her husband's side. And so it is in all of human speech, the *holiest word* is WIFE.

And now, gentlemen, I have examined this testimony, I have examined every charge in the indictment against my clients not only, but every charge made outside of the indictment. I have shown you that the indictment is one thing and the evidence another. I have shown you that not one single charge has been substantiated against John W. Dorsey. I have demonstrated to you that not one solitary charge has

been established against Stephen W. Dorsey—not one. I believe that I have shown to you that there is no foundation for a verdict of guilty against any defendant in this case.

I have spoken now, gentlemen, the last words that will be spoken in public for my clients, the last words that will be spoken in public for any of these defendants, the last words that will be heard in their favor until I hear from the lips of this foreman two eloquent words—*Not Guilty.*

And now thanking the Court for many acts of personal kindness, and you, gentlemen of the jury, for your almost infinite patience, I leave my clients with all they have and with all they love and with all who love them in your hands.

# OPENING ADDRESS IN
# SECOND STAR ROUTE TRIAL.

# OPENING ADDRESS TO THE JURY.

## SECOND STAR ROUTE TRIAL.

*Washington, D. C., Dec. 21, 1882.*

MAY it please the Court and gentlemen of the jury: We consider that the right to be tried by jury is the right preservative of all other rights. The right to be tried by our peers, by men taken from the body of the county, by men whose minds have not been saturated with prejudice, by men who have no hatred, no malice to gratify, no revenge to wreak, no debts to pay, we consider an inestimable right, regarding the jury as the bulwark of civil liberty. Take that right from the defendants in any case and they are left at the mercy of power, at the mercy of prejudice. The experience of thousands of years, the experience of the English-speaking people, of the Anglo-Saxon people, the only people now upon the globe with a genius for law, is that the jury is a breastwork behind which an honest man is safe from the attack of an entire nation. We esteem it, I say, a privilege, a great and invaluable right, that we have you twelve men to stand between us and the prejudice of the hour. We believe that you will hear this case without passion, without hatred, and that you will decide it absolutely in accordance with the law and with the evidence. This is the tribunal absolutely supreme. In a case of this character, gentlemen, you are the judges of what is the law; you are the judges of what are the facts; you are the absolute judges of the worth of testimony; and you have not only the right, but it is your duty to utterly disregard the testimony of any

man that you do not believe to be true. You, I say, are the exclusive judges, and for that reason we ask, we beg you, to hear all this testimony, to pay heed to every word, and then decide, not as somebody else desires, but as your judgment dictates, and as your conscience demands. Here before this jury all letters of Attorneys-General, all desires of Presidents, all popular clamor, all prejudice, no matter from what source, is turned simply to dust and ashes, and you are to regard them all simply as though they never had been.

There is one other thing. Some people are naturally suspicious. It is an infinitely mean trait in human nature. Suspicion is only another form of cowardice. The man who suspects constantly suspects because he is afraid. Whenever you find a man with a free, frank, generous, brave nature, you will find that man without suspicion. Suspicion is the soil in which prejudice grows, and prejudice is the upas tree in whose shade reason fails and justice dies. And allow me to say that no amount of suspicion amounts to evidence. No case is to be tried upon suspicion. No case is to be tried upon suspicious facts. No case is to be tried on scraps, and patches, and shreds, and ravelings. There must be evidence; there must be absolute, solid testimony. A case is tried according to the rocks of fact and not according to the clouds and fogs of suspicion. No juror has a right to make a decision until he feels his feet firmly fixed upon the bed-rock of truth.

So I say, gentlemen, that we are glad of the opportunity to make a statement of this case to you, and to tell you exactly the manner in which my clients became interested in what is known as the star-route service. You have to be guided in this case by the indictment. That is the star and compass of this trial. You cannot go outside of it. The evidence must be confined to the charges contained in that instrument. If you find us guilty of a conspiracy, it must be such a conspiracy as is set forth in that indictment. That indictment is the charter of your authority, and you have no right to find us

guilty of anything in the world except that which is therein charged.

Now, let me give you an exceedingly brief statement of what we are here for. It is charged in that indictment that all these defendants, including one who has been discharged by a jury, who has been found not guilty, Mr. Turner, including another who is dead, Mr. Peck, conspired together for the purpose of defrauding the United States, and we are met at the threshold with the statement that conspiracy is very hard to prove. It is like any other offence, gentlemen. They say conspirators generally meet in secret. My reply to that is that people generally steal in secret, and the fact that they stole in secret was never deemed an excuse for not proving the offence before they were found guilty. You can see that this is precisely like any other offence in the world. Men when they commit crimes endeavor to get away from the public eye. They are in love with darkness. They do not carry torches in front of them. And it is so in every crime. But whether conspiracy is difficult to prove or not, it must be established before you can find the defendants guilty. That is a difficulty that the Government must overcome by testimony. The jury must not endeavor to overcome it by a verdict. And I say here to-day that the same rule of evidence applies to this case as to any other, and you must be satisfied by the testimony the Government will offer that these men conspired together; that they entered into an arrangement wherein the part of each was marked out, and that that arrangement was contrary to law; and that the object of that arrangement was to defraud the Government of the United States.

This indictment is kind enough to tell us the means that were employed to carry out that conspiracy. How did they find these means, gentlemen? They must have had some evidence on which they relied. If they had evidence enough to convince them, they must introduce that evidence here, and if that evidence establishes beyond a reasonable doubt

that these men conspired, then you will find them guilty; otherwise not. The difficulty of establishing it is something with which you have nothing to do. How did they conspire? What were the means they had agreed to use? Let us see. Thomas J. Brady was the Second Assistant Postmaster-General. The Postmaster-General was not included in the scheme, consequently they must deceive him. The Sixth Auditor was not included in this conspiracy, and as by virtue of his office it was his duty to go over all of these accounts and pass upon the legality of each item, it was necessary to deceive him. According to the indictment Mr. Turner was a clerk in the department, and his part of the rascality was, on the jackets inclosing petitions, to make false statements in regard to the contents of the petitions inclosed. The object of that being that when the Second Assistant Postmaster-General, Mr. Brady, exhibited these jackets to the Postmaster-General, it being considered that he would not have time to read the petition, he would be misled by the false statements on the cover touching the contents.

The next step was for the contractors to get up false petitions; that is, petitions to be signed by persons who did not live along the route upon which the mail was to be carried. These petitions also to be forged; that is to say, the names of persons put there by another, or the names of fictitious persons written, when in fact no such persons existed.

The next thing to do was to write false and fraudulent letters; to induce others to write such letters; the next thing, to make false affidavits; and the next thing, to make false orders—those to be made by Mr. Brady—and these false orders were to have, as a false foundation, false petitions, false letters, false communications, false affidavits, and fraudulently written representations.

That is the indictment. That is the scheme said to have been entered into by my clients with all of these defendants, and the object being to defraud the Government of the United States. Now, in order to establish that scheme, it

would be necessary for the Government to prove it. Not to assert it. Neither have you the right to infer it. No man can be inferred out of his liberty. No man can be inferred into the penitentiary. That is not the way to deprive a man of his reputation and of liberty—by inference. They must prove it. They must prove that the petitions were false. They must prove that the letters were fraudulent. They must prove that the orders rested upon those false and fraudulent petitions, letters, and affidavits ; and they must prove that Mr. Brady knew them to be false.

It is also stated in this indictment that service was to be paid for when it was not performed ; that service was discontinued and a month's extra pay allowed ; that fines were imposed and afterwards set aside because the contractors agreed to pay fifty per cent. of such fines to General Brady. I will speak of them when I come to them.

Now, there is a clear statement. What part, then, did my clients play in this scheme ? I will tell you. It is charged in the indictment that John M. Peck was in this scheme, and, although he is dead, whatever he did, I imagine, can be established by the Government. A man can be found guilty, I understand, of having entered into a conspiracy with another, although the other be dead, and the living man can be convicted.

Now, it is stated in the outset that my clients never had been engaged in carrying the mail and that is regarded as an exceedingly suspicious circumstance. A man has got to commence some time, if he ever goes into the business, and if this doctrine be true, the first bid that a man ever makes is evidence that he has entered into a conspiracy. Suppose, on the other hand, my clients have long been engaged in this business. What would the Government counsel then have said ? They would have said, gentlemen, that they had been engaged for years in the business. They knew all the tricks that were played, and conse-

quently they were the very persons to form a conspiracy. And that is the wonderful thing about suspicion. It changes every fact. It colors every word it reads and every paper at which it looks; and no matter what are the facts, the moment they are regarded with a suspicious mind they prove what the man suspects.

So, then, the first charge is that we had never been in the business, and consequently our going into the business must have been the result of a conspiracy. Gentlemen, if the doctrine be laid down that it is dangerous for a man to make a bid the result of that doctrine will be to double the expenses of the Government in carrying the mails. All that will be necessary, then, is for the old bidders to combine. They will know that there is no danger of any new men interfering with them, because the new men will be immediately indicted for conspiracy and the old men will have the field to themselves. You can see that this is infinitely absurd. There is only one step beyond such absurdity, and that is annihilation. No man can possess his faculties and get beyond that absurdity, if it is evidence of conspiracy, because it is the first thing.

As a matter of fact, however, John M. Peck had been engaged in the mail business. He was engaged in the business before 1874. He had been interested with others before that time. He was interested in several important routes from 1874 to 1878. It was in the fall of 1877 that he made arrangements to bid at the next letting. He was a business man. He was not an adventurer. He was secretary at that time of the Arkansas Central Railroad. He had been, I believe, for two sessions a member of the ArkansasLegislature. He was in good standing, solvent, and regarded as an honest man. In 1874 he was interested in the bids and, as I said, was engaged in carrying the mails at the time these contracts were entered into. He became acquainted with John W. Dorsey, I believe, in 1874. When

he made up his mind to put in more bids for the letting of 1878 he went after John W. Dorsey, and they met together in the city of New York, I believe, in the month of September, and agreed that they would put in some bids for the letting of 1878. Peck was acquainted with John R. Miner and had been acquainted with him for a considerable time. Mr. Miner wanted to go into some other business than that in which he was then engaged, and those three men made up their minds to bid. Was there anything criminal in that? Nothing. Any men anywhere have the right to combine; the right to form a partnership; the right to come together for the purpose of making proposals for carrying the United States mails. Of course you will all admit that. Now, that is what they did. There was nothing criminal, nothing secret, nothing underhanded. Everything was above board, open, and in the daylight. There is no conspiracy yet, and we will show that.

John M. Peck had been troubled with a lung disease. He had gotten much better in September, and thought that he was almost well. Later in the fall he took a severe cold and got much worse, and from that difficulty, I believe, he never wholly recovered. He went, however, to Colorado and New Mexico, and finally died.

Now, let us see about John W. Dorsey. I believe that great pains have been taken to say that he was a tinsmith, which is a suspicious circumstance. Why? Is there any law against a tinsmith bidding to carry the mails? Is there any such provision in the statute? And yet that has been lugged forward as one of the evidences of a conspiracy in this case, and it has been lugged forward in a way to cast some disgrace upon this man—simply because he was a tinsmith. Well, do you know I have as much respect for a good tinsmith as for a good anything. What is the difference? Sometimes I have thought I had more respect for a good tinsmith than a poor professional man—*some-*

*times.* In this country of all others labor is held to be absolutely honorable, and I think a thousand times more of a man who works in the street and takes care of his wife and children than I do of somebody else who dresses well and lives on the labor of others, and then is impudent enough to endeavor to disgrace the source of his own bread. I think the man who eats the bread of idleness is under a certain obligation to speak well of labor. And yet we have the spectacle in this very court of the Attorney General of the United States endeavoring to cast a little stain upon this man. As a matter of fact, and I am almost sorry to say it, John W. Dorsey is not a tinsmith. I am almost sorry to make the admission. He happened to be a merchant, which is no more honorable but somewhat easier. He dealt in stoves and tinware. That, gentlemen, is his crime, and upon that rests the terrible suspicion that he is a conspirator. And I want to say more, that his reputation for honesty, his reputation for fair dealing, is as good as that of any other man in the State in which he resides. He made up his mind to cast his fortunes with John M. Peck and with John R. Miner and make some bids for carrying the mails of the United States. That is all there is about it.

There is, however, another suspicious circumstance, and that is that John W. Dorsey was the brother of Stephen W. Dorsey, and Stephen W. Dorsey at that time was a Senator of the United States. That is another suspicious circumstance. Whenever you find a man with a Senator for a brother, put him down as a conspirator. Another suspicious circumstance, John M. Peck was the brother-in law of S. W. Dorsey, absolutely married a sister of Mrs. Dorsey, and that was the beginning of this hellish conspiracy. It was suspicious. He intended to rob the Government when he was courting that girl.

Now, we come to another man, Mr. John R. Miner, and

the suspicious thing about Miner is that he lives in Sandusky. But that of itself would be nothing. Dorsey lived there once, too. Now, do you not see how they moved to that town with the diabolical purpose of swindling this great Government? Miner was not in very good health—do you not see—pretended to be sick so that he could leave Sandusky; and in some way Miner and Dorsey were excellent friends—another suspicious circumstance; and for several years whenever John R. Miner visited Washington he laid the foundations of this conspiracy by always stopping at the house of Senator Dorsey—another suspicious thing. And do you not recollect the delight, the *abandon* with which Mr. Bliss emphasized the word house, when he said that they met at Dorsey's *house?* I had a great notion to get up and plead guilty on that emphasis. Miner came here. He and Peck were acquainted; and wherever you find four men acquainted, gentlemen, look out, there is trouble. When Miner came here he went directly to the house of Senator Dorsey. I admit it with all the damning consequences that flow from that admission. He did not even go to a hotel. He went directly to Dorsey's house. I want that in all your minds, because the prosecution regards that as one of the foundation facts in this conspiracy, and while admitting it, do you not see how much I save them in the way of evidence.

And there is another damning fact connected with this case. Dorsey in the top of his house had set apart one room for an office. It was up two or three pair of stairs. I think he established his office there to shield himself a little from the people who usually call on a Senator in the city of Washington. But he found that he put himself to more trouble than he did them, so he moved his office to the lower part of the building, and when John Miner got to that house he occupied a room right next to that office upstairs, and sometimes he went in there and wrote. Now,

you see, gentlemen, how that conspiracy was planted; how the branches sprang out of the windows of that room and covered all the territory of the United States. I might as well admit that frightful fact. I do not know that they know that, but I might as well admit it, because we want the worst to come first. Before Miner came here he wrote a letter. There is another place to put a pin of suspicion. He wrote a letter to S. W. Dorsey; that is, it was Miner or Peck, I have forgotten which, and may be that very forgetfulness of mine is another evidence of conspiracy. A letter was written either by Miner or Peck to Stephen W. Dorsey, saying that they were going to bid; that Peck was not well enough to be here at that particular time, and would he be kind enough to hand that letter to some man in whom he had confidence and let that man get such information as he could with regard to the routes upon which they expected to bid all these Western star routes.

Now, what did S. W. Dorsey do? There was a man in town by the name of Boone. He sent for Mr. Boone, and I believe that Mr. Boone went to Mr. Dorsey's house, and that Dorsey handed him that letter in his house. And what was the object of the letter? For Boone to get information regarding these routes. Well, now, what did Boone do? Boone made up a circular which he sent to all the postmasters, or most of them, through Oregon, Washington Territory, Colorado, New Mexico, Nevada, California, Kansas, Nebraska; that is to say, the Western States and Territories; and in this circular a certain number of questions were propounded to each postmaster. First, the distance from that post-office to the next, and from the next to the next, and so through the route. Second, the condition of the roads, whether hilly or level. Third, about the snows in winter and the floods in spring. Fourth, the cost of hay and corn and oats. Fifth, the wages that would have to be paid to the man or men; and it may be some

other questions in addition. Now, these circulars were sent by Boone to all the postmasters in consequence of a letter that he received in Dorsey's house. What for? So that by the time that Miner and Peck and John W. Dorsey came they could sit down and bid intelligently upon these routes; so that they would have some information that would guide them; in other words, that they would not be compelled to bid at random.

Now, we will show, gentlemen, that that was done, and if at that time there had been a conspiracy, certainly such information was of no particular value. Now, that is what Mr. Boone did, and I believe that is about all he did at that time. There is no conspiracy yet, no fraud yet. It is utterly impossible to defraud the Government by getting information from postmasters as to the condition of the roads, and as to the distance from one post-office to another. There is no fraud yet, no conspiracy up to this point. In a little while Mr. Miner and Mr. John W. Dorsey appeared. Ah, but they say Stephen W. Dorsey was at that time a Senator of the United States Yes, he was, and I believe he remained Senator until the 4th of March, 1879. When his brother came we will show to you that Stephen W. Dorsey said to his brother, "I would rather you would not bid; I would much rather that you would keep out of this business, because I am a Senator and somebody may find fault. Somebody may suspect, and consequently I would much rather you would get out of the business." John W. Dorsey did not agree with him. He said he did not see how that could interfere with him, and that he believed he could do well in that business, and the consequence was he went on. There is nothing suspicious so far as I can see in that. That is what we will show.

This man being a member of the United States Senate did what he did out of pure friendship; did what he did for his brother, what he did for Mr. Peck, and what he did for Mr.

Miner from pure friendship. I know it is very difficult for some people to imagine that any man does anything for friendship. They put behind every decent action the crawling snake of a mean and selfish motive. My opinion of human nature is somewhat different. I have known thousands and thousands of men capable of disinterested actions, thousands of men that would help a brother, a brother-in-law, or a friend, and help them to the extent of their fortune. I have known such men and I never supposed such acts could be tortured into evidence of meanness.

The first charge against Stephen W. Dorsey is that he sent some bonds and proposals for bids to a postmaster by the name of Clendenning, in the State of Arkansas. The trouble with these bonds, as I understand it, was that the amount of the bid was not put in the blank in the printed proposal. It is claimed by the prosecution that according to the law the postmaster has no right to certify to the solvency of the security until that blank is filled. I want to explain this so that you will understand it. I think I have one of the bonds and proposals here. I would like to have the Court see exactly the scope of it. [Exhibiting blank form of proposal and bond.] The proposal is that the undersigned, ———, whose post-office address is ———, of the county of ———, and State of ———, proposes to carry the mails of the United States from July 1, such a date, to June 30 of such a date, being four years, between such and such a place, under the advertisement of the Postmaster-General, for the sum of ——— dollars per annum. Now, if I understand the matter of the Clendenning bonds, they were filled up with the exception of the blank in which the amount of the bid was to be written. That is the charge, as I understand it. Whenever a man makes a proposal to carry the mail for four years on a certain route, that proposal must be accompanied with a bond in a certain amount, and certain men must sign that bond as sureties, and then a certain postmaster must certify to the solvency of the sureties, the sureties having made oath as to

the value of their property. Now, understand that perfectly. It is not the bond that a man gives after his bid has been accepted. It is a bond that he gives to show that his bid is in good faith. That bond is conditioned that if the contract is awarded to him he will give another and sufficient bond not only, but I believe it is also conditioned that he will carry the mail. The charge is—and let us get at it just exactly—that some bonds were sent to a man by the name of Clendenning, who was a postmaster, and this blank was not filled. Let me tell you why. It was the custom—and I want your Honor to understand that perfectly, because so much was made of it before in talk—to leave that blank unfilled. It is the blank for the amount of the bid. In the advertisement of the Government the penalty of the bond is stated, so that the amount of the bid has nothing to do with the penalty in the bond. Understand me now. If the bond was for ten thousand dollars, it was because that amount had been put in the advertisement by the Government. It did not depend upon the amount of the bid. It had nothing to do with it. The amount of the bid threw no light upon the amount of the bond. The penalty of the bond was fixed by the Government before the bid was made and inserted in the advertisement published by the Government. Why then did they not wish to fill up this blank? This blank, gentlemen, told the amount of the bid. Where there are many bidders, and an important route, if you let the postmaster who has to certify to the sureties know the amount of the bid he might sell you. He could go and tell somebody else "I have certified to all the sureties on this route, and the lowest bid up to this time is fifteen thousand dollars," and the person whom he told might go and bid fourteen thousand nine hundred and ninety-nine dollars and take the route. Ah, but they say the postmaster is not allowed to tell the amount of the bid. No. What was the penalty if he did? He would lose his office. Now, here is a postmaster holding an office worth, perhaps, a hundred dollars a century, or, per-

haps, fifty dollars a year, and by selling information as to one bid he might make ten thousand dollars. I do not know what he could have made. Certainly the bidders did not feel like trusting the secret of their bids to the postmaster who certified to the sureties. As a consequence the bond was filled up with the penalty according to the advertisement, but the blank in which the amount of the bid was to be written was not filled, because they wanted the postmaster's mind left a blank upon that subject. In other words, that blank was left unfilled, not to defraud the Government, but to prevent other people from defrauding the bidder. That is all there is about it. That is everything about the Clendenning bonds. But it may be well enough to state, gentlemen, that those Clendenning bonds were never used on a solitary route in this indictment, and I believe never anywhere; that no contract was ever awarded upon any one of those proposals. The only rascality in the transaction, gentlemen, was the failure to fill a blank; and the reason they failed to fill that blank was because they did not want the postmaster to know the amount of the bid. Let us come right down to practical matters and things. For instance, suppose one of this jury is in the stone-cutting business, and the Government should issue an advertisement calling for proposals to furnish dressed granite, and specify that every man who bid must file a bond in a penalty of five thousand dollars to carry out his contract, and that that bond must be approved by the postmaster here. Suppose it was a contract of great proportions. Would the man who bid be willing that the amount of the bid should be inserted in the blank to be passed upon by the postmaster? No. Why? He would not want the postmaster to know it. Who else would he not want to know it? He would not want his sureties to know it. A man might be standing by while the bond was being approved and read the amount of the bid. The bidder would be afraid somebody would get at those figures and go and underbid him. Every man of common, ordinary sense knows that. If you made a bid you

would not let your sureties know the amount and you would not give the amount to the keeping of a postmaster, neither would you leave it to chance or accident. You would say, "I will leave the amount a blank. I will keep it in my mind, and when the paper comes into my hands for the last time I will write it in there and fold it and seal it and give it to the Government." That is what every sensible and prudent man would do, and what has been done for years. And yet that act is brought forward as something to stain the reputation of an honest man ; something to strike down as with a sword the character of an ex-Senator. They even say he wrote upon paper that had the mark of the United States Senate Chamber upon it. That is only another evidence that there was nothing wrong in it. It was stated, too, in the opening of this case, that an affidavit was made upon paper that bore the mark of the National Hotel of this city. Think of such a damning circumstance as that! Well, gentlemen, so much for the Clendenning bonds. We will prove that the blank was left unfilled on purpose, not to defraud the Government, but to prevent other people from defrauding us. Let me say in that connection that there was an investigation in 1878 upon this very question. The Clendenning bonds were brought up. Testimony was heard, and we will be able to show you the facts that I have stated. Then, if I am right, gentlemen, there is nothing in it; and when the opening statement was made the Government knew, just as well as I know, that there was nothing in it; at least they ought to have known it. Probably it is not proper for me to say they knew it, because men get so prejudiced, so warped, so twisted that it is hard to tell what they know or what they do not know. But that has nothing to do with this case and, in my judgment, will never be admitted by the Court. If it is admitted by the Court we will establish exactly what I have told you. So much for the Clendenning bonds. Do not forget that the penalty of the bond was put in by the Government. Do not forget that the amount of the bid was left

blank simply to protect ourselves. Do not forget another thing: That leaving that blank unfilled could not by any possible peradventure injure the Government. The bond was just as good with that proposal unfilled at the time the sureties signed it as though it had been filled. It had to be filled before it was finally given to the Government or else there would be no bid. If there was no bid, then no obligation rested upon the sureties. Certainly they could not be harmed, and if there was no bid certainly the Government could not be harmed; unless the bid should have happened to be lower than any received; and yet out of that nothing, out of that one bramble, a forest of rascality has been manufactured. Gentlemen, that is the result of suspicion when it is hoed by malice and watered by hatred.

The next suspicious circumstance, gentlemen, is that we bid. That is a suspicious circumstance. Miner bid, Peck bid, and John W. Dorsey bid. And the suspicious circumstance is that they did not bid against each other. Why should they? I was at an auction the other day and unconsciously bid against myself, but I did not think it any evidence of rascality on my part; I thought it tended to show that I was not attending strictly to business, and yet it is brought forward as a suspicious circumstance that these gentlemen did not bid against themselves. Another suspicious circumstance is that they bid in their individual names. That is the way all the bidding is done, I believe. I believe every bond has to be signed by the individuals and not by any partnership. That I believe to be one of the regulations of the department. Well, there is no rascality yet, as far as I can see. Now, when the contract is accepted—I will come to the bidding question again—the contractor has to give a bond. One of those bonds will be put in evidence in this case. You will see what the contractor is bound to do. Then it can be subcontracted. You will find that the contract given by the subcontractor

to the department is not a hundredth part as severe as the bond the contractor gives to the Government. In the contract that we give to the Government certain things are provided. You will find that a copy of it will be introduced. The contractor is left to the mercy of discretion—I believe that is the word—of the Postmaster-General You will find that if he fails to carry the mail one trip, no matter by what he may be prevented, by flood or storm or fire, he is not to be paid for it. Although he is there ready with his men and horses, if he is prevented by the elements he has no pay. If the Postmaster-General thinks he ought to have carried it when he did not, he can take from his pay three times the value of the trip. He can take from him one quarter's pay. He reserves in his own breast the power to declare that contract null and void, because in his judgment the contractor has not done his duty. Everything is left to him. The man who signs that contract gives a mortgage on his life, liberty, and pursuit of happiness. He has no redress. I simply call your attention to this to show you the obligation that a contractor takes upon himself. We will show you that he is under obligation to discharge any carrier that the Government does not like; that he has no right to carry any package or any letter that can go by mail; that he is to forfeit a trip when it is not run, or not to exceed three times the pay of a trip; that he is to forfeit one-quarter of a trip if the running time is so far behind that he fails to make connection with the next mail; that if he violates any of these provisions he forfeits a penalty equal to a quarter's pay, or if he violates any other provision touching the carriage of the mail and the time and manner thereof, without a satisfactory explanation in due time to the Postmaster-General, he can visit a penalty in his discretion, and the forfeitures may be increased in the penalty to a higher amount, in the discretion of the Postmaster-General, according to the

nature or frequency of the failure and the importance of the mail. Provided that, except as specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

It is also agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the department; for transmitting commercial intelligence or matter which should go by mail; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, &c.

It is further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is further stipulated and agreed by the said contractor and his sureties that the contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months. You will see, gentlemen, how perfectly, how absolutely, the contractor is in the power of the department. The Government enforces its contracts. No matter how many years may elapse they are still after the sureties and are still after the principal. Nothing relieves a man but death. Only a little while ago a case was decided in the Supreme Court of which I will speak to you. An importer of sugar gave the importers' bond to pay the duty upon that sugar. By the custom of trade, sugar is sold in bond.

The importer sold to a third person and the third person went to get the sugar. By law he could only take it after paying the tax; and yet one of the officers of the Government, contrary to law, allowed him to take the sugar without paying the tax. The Supreme Court has just held that the original importer and his sureties are liable to pay that tax—the man who took the sugar out having become bankrupt—although the sugar was given to the second party simply by a violation of law, and that law was violated by one of the officers of the custom-house without the knowledge or consent of the original importer. I tell you, gentlemen, whenever a man gives a bond to this Government the Government stays with him. The Government does not die; the Government does not get tired; the Government does not get weary. The Government can afford to wait, and the poor man with the bond hanging over him cannot go into business, cannot get credit, but just lingers out a life of expectation, of hope, and of disappointment. I trust none of you will ever sign a bond to the Government. There is another thing, gentlemen. If you bid on a hundred routes and they are given to you and you put the service on ninety-nine of the routes and carry it in accordance with the contract, and yet fail on the hundredth route, the Postmaster-General has a right to declare you a failing contractor. A failing contractor on the hundredth route? Yes. On any more? Yes; on every one. And whoever is declared a failing contractor on one route is by virtue of that declaration a failing contractor on all. They are all taken from him. So that when a man bids for more than one route, for instance, a hundred or a thousand, and gets them and carries them all absolutely according to his contract but one, he can be declared a failing contractor on all. What does that mean? It means not simply ruin to him, but ruin to every one of his sureties, unless they are in a condition to go on and

carry the mail. I want you to understand something of the obligation of a contractor with the Government of the United States.

Now, I come to the bidding. These bids were made with a full understanding of the obligation of a bidder. Messrs. Miner, Peck, and John W. Dorsey bid, I believe, on about twelve hundred routes. You see you are in great luck in bidding if you get one route in fifty that you bid upon. In the first place, there are about ten thousand star routes. I do not know that it is too much to say that the number of bids runs up into the hundreds of thousands; somewhere in that neighborhood. Hundreds of men often bid on one route. Consequently, nobody who bids expects to get more than a few of the routes for which they bid. Now, is there the slightest evidence in the statement of the Government as to the frauds in this bidding? Let me tell you how some frauds have been committed. Suppose, for instance. this was a fraudulent business, and Miner, Peck, and Dorsey were bidding. Let me explain it to you. I want you to know it. All there is in this case is simply to have you understand it. That is all there is. And if you do not agree with me when we get through the case I shall simply think that you have not comprehended it. Say that four men bid on the same route, one man four thousand dollars, another man three thousand dollars, another man two thousand dollars, and another man one thousand dollars.

Now, the man who bids one thousand dollars is of no account, has not a dollar in the world, and so when the bid is given to him he does not want it. He is what they call a straw man. The law provides then that the next man may have it. The law does not provide that he must take it. He may have it if he wants to, but you cannot force him to take it, because he is not the lowest bidder. He is the two thousand dollar man. He is another straw gentleman. He does not want it. Then the Government offers

it to the next man at three thousand dollars. He is another chap made of hay. He says he doesn't want it. Understand the Government cannot force these straw and hay men to take it. Then they go to the fourth fellow, who bid four thousand dollars. It is a good thing at four thousand, and he says, "Yes; I will take it." That is what they call fraudulent bidding. If you had found Dorsey and Miner and Peck bidding on the same route and one of them failing and another one taking it, you would not only have suspected fraud, but you would have known it. Now, if it is a badge of fraud for them to bid upon the same route and apparently against each other, I will ask you if it is not a badge of fair dealing that they were not found bidding against each other. They bid on about twelve hundred routes, and much to their astonishment they got one hundred and thirty-four contracts.

You have heard here a great deal of talk about the number of men and horses. We will show you all about it. Men differ upon this subject. If men did not differ upon it at all these bids would be alike. Instead of being a dozen bids, all different, and differing sometimes as much as ten, twenty, thirty, forty, or a hundred dollars or more, they would bid the same. If they all agreed on the number of horses and men it would take, and about what it would cost, they would bid about alike, wouldn't they? But when they are bidding they honestly differ. One man says it would take twenty horses, and another says "no, it will take forty." Do you not know that the number of horses depends a great deal upon the kind of man who makes the estimate. Here is a man who is hard and brutal, and he says a horse can do so much work. He says it is cheaper to buy him and wear him out than it is to feed him decently. You have known men who were perfectly willing to make fortunes out of a horse's agony, and out of animal pain. There are hundreds of them in the world. Now

take it on horse railroads, and with freighters, and teamsters. Whenever you find a mean, infamous man, if he cannot whip his wife, he will take his spite out on his horse. If a man is a good, broad, generous, free fellow he will say, "I don't want to work that horse to death; I think it will take four horses. I am going to keep my horses fat, and I am going to treat them as a gentleman should." Another man, a wretch, will come up and swear it would not take more than fifteen horses. When his horses are through the service you will simply see a pile of bones wrapped in a lamentable hide. You understand that.

Well, these men made twelve hundred bids and got one hundred and thirty-four contracts. Ah, but they say, here is another badge of fraud, another badge. Ah, they bid on small routes, on cheap routes, on routes where the mail was carried infrequently and on slow time. If it is a badge of fraud to bid on such routes the Government can never let out any more. Most of these routes were cheap routes. Now, I owe it to you to give you the reason for this. We will prove in the first place that these men were not rich men. If they had been very rich they probably would not have gone into the business at all. They would have gone into that perfectly respectable business of buying Government bonds. They would have bought Government bonds and made other fellows pay the interest, and twice a year they would have formed a partnership with a pair of shears, and thus in the sweat of their faces they would clip their coupons. They bid on poor routes. Why? They were poor, comparitively speaking. They had not the money to stock the expensive routes where four-horse coaches were run. They preferred to take the cheaper lines. Why? Because they could stock them. They would have been able to have stocked the routes if they had only obtained the number they expected. But as I told you, they got many more routes than they ex-

pected. Was that for the benefit of the Government? How did these men come to bid so cheaply on some of these routes? I will tell you. Because they had the information, because they had received the facts from all the postmasters on the routes, and consequently they made a good close calculation, and the result was that their bids were below others, and the fact that their bids were accepted saved the Government hundreds of thousands of dollars. When they found themselves with all these contracts, the first hard work they did was to give away all they could. That was the first hard work. They had contracts, not for sale, but just to give, and they succeeded in giving away several of them. I believe they sold two of these children of conspiracy for the enormous sum of one hundred dollars each. That was the highest sale they made at that time. Afterwards another route was sold which I will explain when I come to it. Now there is no rascality yet. No fraud yet. No conspiracy yet. Well, they then went to work to get their bonds. But first let me say that there was another reason for bidding on cheap routes. Whenever the bid is above five thousand dollars, then the man who bids must, at the time he bids, put up a check for five per cent. of the amount.

A check certified by a national bank. For instance, if it all comes to a hundred thousand dollars he has got to put in a certified check for five thousand dollars. Even in the little bids we made we had to deposit with the Government some twenty-six or twenty-eight thousand dollars, and I do not know but more, in cash, or what is the same as cash, for the bank certifies that the money is there. That is another reason they bid on smaller routes. What is the next? The Government asks such frightful bonds, such terrible amounts, that a man must be almost a millionaire, or else there must be a confidence in him that is universal, before he can give these bonds.

There was one route at this very bidding where they had to give bonds for six hundred and forty thousand dollars, and

the sureties upon these bonds under oath had to testify that they had real estate to the value of six hundred and forty thousand dollars, exclusive of all debts, dues, and demands. So there was another reason for bidding upon small routes. Where the amount was under five thousand dollars no certified check had to be deposited, and the smaller the route of course the smaller the bond.

Now, I have endeavored to show you the reasons that we bid upon these routes instead of upon the larger ones. The reasons as stated by the Government are that we took these routes where the service was once a week, so that we could have the service increased; that we took those routes where the time was long so that we could have it shortened, that is to say, expedited. But I tell you that when a perfectly good reason lies at the very threshold of the question you have no right to go further. The reasons I have given to you it seems to me are perfect and you need no more.

Now, then, we got, I say, about one hundred and thirty-four routes. Of these, one hundred and fifteen are without complaint. There is not a word about the other one hundred and fifteen. Recollect it. We got one hundred and thirty-four routes. In this indictment are nineteen; one hundred and fifteen appear to be perfectly satisfactory to this great Government. There is not a word as to those routes, not one word, I say, as to one hundred and fifteen routes, and they want you to believe that these defendants deliberately selected nineteen routes out of one hundred and thirty-four about which to make a conspiracy, and that they left one hundred and fifteen to go honestly along, but picked out nineteen for the purpose of defrauding the Government.

Now, then, when these gentlemen found themselves with these routes, the next thing was to put the stock and the carriers upon them. As I told you, a good many more had been awarded to them than they anticipated. They had not the money. So, in putting the stock upon several of the routes, they found it necessary to borrow some money, and here comes

another suspicious circumstance. Mr. Miner borrowed some money of Stephen W. Dorsey, and everybody is astonished that any man would be mean enough to loan money to another; that any man could so far forget the dignity of the office that he held as to help a friend. Their idea of a Senator is of such a lofty and dignified character that he ceases to take interest in anything except national affairs; that after he has been sworn in he forgets all the relationships and friendships of the world, and the idea of asking him to loan money seems, to the prosecution, to be the height of unconstitutionality. But as a matter of fact he did loan some money, and we will show you how that loan was treated, showing you that at that time he had not the slightest interest in it. He loaned some money, and kept loaning money until, I believe, he had given them about sixteen thousand dollars to get these routes on. Then he, being on his way to New Mexico, met in the city of Saint Louis John R. Miner, who at that time was coming back, I think, from Montana or Dakota, where he had been putting stock on a route. Miner saw Dorsey in Saint Louis, and said to him, "We have got to have a little more money, and I want you to indorse my note or to loan me your note and I can get it discounted in the German-American Bank in Washington." Finally, Dorsey said to him, "You have already obtained from me about sixteen thousand dollars: I will give you the note you ask, or indorse your note upon one condition, and that is that you shall give me orders"—what are called Post-Office drafts—"not only for the amount of this note, but for the amount of the sixteen thousand dollars." We shall insist, gentlemen, that that evidence shows exactly our position, and that you are entitled not only to draw from it, but that you must draw from it the inference, the fact, that we had no interest in those routes. Finally that was agreed to.

Now, understand it, at that time a contractor with the Government who had agreed to carry the mail for a certain time could give what are called post-office drafts or orders—you know, orders on his quarterly pay—and they would be taken

to the proper officer in the Post-Office Department and they would be accepted, not for the full amount, understand, but for any amount that might be due that contractor. For instance, he might fail to carry the mail, he might be fined, and consequently the amount of that draft might not be there, so that the only thing the Post-Office Department agreed to do was to pay upon that order or draft anything that was due to the contractor. That was done at that time, and why? Because there was no way other than that to secure these advances. So he gave these drafts. He came on to Washington. The note was put into the German-American Bank. The orders on the Post-Office Department were filed with it, and the money advanced by the bank and charged to Stephen W. Dorsey. That made, then, at that time about twenty-five thousand dollars that Dorsey had advanced. That being done he went on about his business.

Now, I will show you what happened after that. I think the note in the German-American Bank was nine thousand dollars or ten thousand dollars, I have forgotten which. Dorsey then went on to New Mexico from Saint Louis, and remained there, I believe, until December, 1878. Now, I want you to understand this, because here turns a very important question, and a very important point. Now, you recollect the information about these bids was collected in the autumn and winter of 1877. The last bid was to be put in, I think, February 28, 1878. Now, this was in the August of that year, 1878. Still being pressed for money, Miner, Peck, and J. W. Dorsey were in danger of being declared failing contractors. Now, recollect it. We will show that at that time Brady, who, according to the Government, was a co-conspirator, threatened to declare Dorsey, Peck, and Miner failing contractors, and if he had declared them failing contractors even on one route that was the end of all. At that time Miner and John W. Dorsey sought out Mr. Harvey M. Vaile, and let me say that is the first appearance of Mr. Vaile in these contracts. He knew nothing about the bidding, was not in Dorsey's house, knew

nothing about the letting. That is his first appearance in these contracts, August, 1878. Now let us see what he did. He was a man of means. He had some money; had been, I believe, for a long time engaged in carrying the mails; understood the business. They will tell you that is a suspicious circumstance as to him, and that the fact that that was John Dorsey's first experience is a suspicious circumstance as to him. Really to avoid suspicion you would have to have a man that had been in it a long time but never had anything to do with it. They got him, and offered what? To give him a third interest in this entire business. I think that was it. They were to give him a third interest in this entire business, a business that had been born of conspiracy, a business that had as a silent partner the man who fixed the amount of money to be paid. Think of that. According to the statement of the Government, here was a conspiracy full-fledged, perfect in its every part, flanked by the Second Assistant Postmaster-General, buttressed by all the clerks they desired, and yet that conspiracy got so hard up that in August, 1878, nine or ten months after its creation, it was willing to give a third to anybody who would advance a little money to carry the thing on.

So Mr. Vaile came in. Now, then, they had to secure Vaile against any loss, and it seems that on July 1, I believe, of that year, the law allowed the subcontract to be filed. It was a little while before that that a law had been passed for the protection of subcontractors. That was all explained to you yesterday. You know it is something like a mechanic's lien; that if the subcontractor would only file his subcontract in the Post-Office Department and let that department know the terms of it they would not pay the original contractor until this subcontractor was paid. Now, that law had gone into effect a little while before August, 1878, and the effect of that law, if anybody filed a subcontract on these routes, was to cut out all those post-office orders that Miner had given to secure Dorsey. You understand me now, do you not? It was

when he met him in Saint Louis that it was agreed that these post-office orders were to be given and filed with the German-American Bank in this city. Now, then, the law passed for the protection of subcontractors, and subsequently the filing of subcontracts on those very routes, would render those post-office orders absolutely worthless. Very well. When they made the contract with Mr. Vaile they agreed to file the subcontracts with the department to protect Vaile and that rendered S. W. Dorsey's security absolutely nothing. That cut out all other claims, drafts, and everything else, and at that time Mr. Miner was fully authorized by power of attorney from J. W. Dorsey and from John M. Peck, who was at that time in New Mexico, to make this transfer to Vaile.

Now, see where we are on August 16, 1878. On Dorsey's return in December, 1878—he had not been here from that time, and do you not see he had nothing to do with it—he found that these subcontracts had been filed. He found that the note in the German-American Bank had been protested, and he found that his collateral security was not worth a dollar, that it was all gone. Thereupon he demanded a settlement. The matter drifted along for a little while, and a settlement was made with the bank; and Mr. Vaile, holding the subcontract, undertook to pay that Dorsey note, and he did pay it. He took it up, and gave, I believe, his own instead, and that was finally paid. But the money due Dorsey, the sixteen thousand dollars that at that time amounted to something more by virtue of interest, was not provided for. The money that had been expended by John W. Dorsey was not provided for. The money expended by Peck was not provided for. Now, I want you to see exactly how that matter stood at that time. We have got it up to that time and here it stands, and the chief conspirator out sixteen thousand dollars and without any interest in one of the routes. There is where he was at that time, and that is what we will show. The brother of the chief conspirator ten thousand dollars out, and not the interest of one cent in any route. The brother-

in-law of the conspirator about ten thousand dollars out, and not a cent in. That was the condition of this conspiracy at this time, and when Vaile took these routes Brady telegraphed him and asked him, "What routes of Miner, Dorsey, and Peck, are you going to put the stock on? This thing can be continued no longer. The stock must go on." We will show it. Now, having got to that point, we will take another step. There is nothing like understanding things as we go along.

Now, from the time Mr. Vaile took the route, to the settlement in 1879, to which I will call your attention in a little while, Mr. Vaile had the absolute control. Neither Peck nor S. W. Dorsey had the slightest thing to do with one of those routes until the final settlement, and I say to these gentlemen of the prosecution now, that in that time they can find no line, no word from Stephen W. Dorsey upon the subject. They cannot find that he wrote a word to any official, that he sent a petition to anybody, that he wrote a letter to any human being upon the subject, or that he took any more interest in it than in the ashes of Sodom and Gomorrah. It went right along.

Now, then, up to this time, Stephen W. Dorsey had made nothing. He was only out about sixteen thousand dollars or eighteen thousand dollars. John W. Dorsey was in the same healthy financial condition. John M. Peck had reaped the same rich harvest of ten thousand dollars lost, and all the things had been turned over to Mr. Vaile; John W. Dorsey put out—left out—with nothing to show. That is the first chapter in this conspiracy. [Resuming.]

I believe when I stopped, the principal conspirators were substantially "broke." The head and front was out sixteen or eighteen thousand dollars, and the other two ten thousand dollars each. Now, a contract was made, and I propose to prove that contract in the course of this trial. When that contract comes to be shown, it will be about this: That, on the 16th day of August, 1878, H. M. Vaile, John R. Miner,

John M. Peck, and John W. Dorsey made an agreement. That agreement made a partnership, and we will show that a partnership was formed by and between Miner, Vaile, Peck, and Dorsey on the 16th day of August, 1878. We will show by the articles of that partnership that H. M. Vaile was made treasurer, and that all the other partners agreed, by suitable powers of attorney, to put the collection of all the money from the Government absolutely in his hands. When he got the money he agreed, first, to pay all the subcontractors; second, the expenses necessary and incident to the proper conduct of the business; third, to divide the profits remaining among the parties as provided in that contract. The profits were to be divided as follows: From routes in Indian Territory, Kansas, Nebraska, and Dakato, to H. M. Vaile, one-third; to John R. Miner, one-sixth; to John M. Peck, one-sixth; and to John W. Dorsey, one-third. From routes in Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington Territory, Oregon, Nevada, and California, to H. M. Vaile, one-third; to John R. Miner, one-third, and to John M. Peck, one-third. Before any division of profits was to be made, the sums which before that time had been advanced were to be paid to the parties so advancing such sums; and if the profits were not sufficient to repay the entire sums so advanced, they were to be paid from time to time during the existence of the life of these contracts. Now, you will find that such contract was made on the 16th day of August, 1878, and that Mr. H. M. Vaile then took absolute and complete control of every one of these routes, and the only thing they asked of him was to repay the money that had been advanced, which, as you know, and as I have told you, was the sixteen or eighteen thousand dollars by S. W. Dorsey, the ten thousand dollars by Peck, and about the same amount by John W. Dorsey. Now that is understood. At that time certain papers were executed by all the parties. I told you that a law had been passed by virtue of which a man could make a subcontract and have

that subcontract put on file, and thereupon he could be protected by the Government. Now, when H. M. Vaile took these routes, and they were to be managed by him, subcontracts were made by the other parties to Mr. Vaile, and Mr. Vaile put those subcontracts on record. Now you can see that they gave him the absolute and entire control of every route. That was the condition. I have explained to you the the liability of a contractor. He cannot put it off on a subcontractor. He is the man primarily responsible to the Government during the life of that contract, and for six months thereafter. Whenever a contract is awarded to any person, he is regarded as the original contractor, and his name is kept upon the books of the department during the life of that contract. No matter how many subcontracts may be made, he is looked to primarily if there is a failure of a a trip, or if there is a failure of the service, and he is responsible for its complete performance. If there comes some great storm and the road is obstructed by snow, or if the bridges are all carried away by flood, and the subcontractor throws down the contract, the original contractor must be ready to take it up; and if he fail to do so, he can be fined three times what he has received for each trip. There is one case in one of these nineteen routes, gentlemen, where the fines exceeded the entire pay simply because they did not carry the mail according to the contract. Now, then, these parties finally made a settlement and they divided these routes. They divided them. They ceased to have any interest in common. Recollect, that was in April, 1879. I want you to know it because this entire case depends on your knowing it. This entire case, gentlemen of the jury, depends on your understanding it. In April, 1879, Mr. Vaile having had possession of these routes for several months, a division was made of them, and all interest in common was at that moment severed. At this time, I say, these routes were divided, and all partnership and all partnership interest was absolutely destroyed. I want to tell you why. When Dorsey returned

from New Mexico and found that his orders on the Post-Office Department had been superseded by subcontracts and that his collateral security was worthless he was indignant, and at that time he and Mr. Vaile had a quarrel. He did not think he had been properly treated, and for that reason the moment he got the note at the German-American Bank provided for, the moment he induced Mr. Vaile to assume the payment of that note, he gave evidence that he wanted a settlement. Not that he wanted the routes divided at that time, because he did not dream of such a thing. He wanted the settlement. He wanted his money. The arrangement that had been made with Mr. Vaile was unknown to Mr. Dorsey, who at that time was in New Mexico ; and, as I told you before, when he returned and found that the note that had been given to the German-American National Bank was protested, and found, as I told you twice, his collateral security was worthless, he wanted a settlement. He wanted his money refunded to him. They said to him, "We haven't the money. We have just got the stock really upon these routes. We have just got under way, and we cannot pay out the money." "Very well," said he, "what will you give me?" I want you all to see that this was a simple, natural, ordinary proceeding. Said he, "I want my money." Said Vaile to him, "We haven't the money, but I will tell you what we will do. We will divide the routes with you." Now, recollect at that time that they had a hundred and thirty-four routes, and had given some of them away. At that time they agreed upon a division, and they agreed how that division should be made. We will prove the agreement to you. The agreement was that Mr. Vaile should choose first, taking the route he wanted—he and Miner being together at that time—that Mr. Dorsey should choose the next, and Mr. Miner should choose the third route ; and then that Mr. Vaile should choose the fourth, Stephen W. Dorsey the fifth route, Mr. Miner the sixth route, Mr. Vaile the seventh route, and so on. They finally concluded it

would be fair for Mr. Vaile to take the best route, Dorsey the next best, and Miner the next best, and then again Vaile the best, Dorsey the next best, and Miner the next best, and that that would be an average that would do justice to each. In that way, gentlemen, they divided these routes. There was no conspiracy ; nothing secret. This division was made on the 6th day of April, 1879, not only after Dorsey had gone out of the Senate, but after he had advanced this money, after they had failed to repay him, after he had failed to collect it, and when he finally had said, "I must have some settlement that recognizes my claim." Gentlemen, I want you to know that. In this case that fact will be one of the great central facts. On the 6th day of April, 1879, these routes were absolutely divided, and after that they had nothing in common. But you recollect that these routes were divided by chance. Mr. Vaile chose the first route. He might choose a route that had been bid off by Peck, or he might choose a route that had been bid off by John W. Dorsey. Stephen W. Dorsey took the next route, and that might have been a route that had originally been awarded to his brother, or to Peck, or to Miner. You can see how that is. The division was here complete. Mr. Miner did not have the routes he had bid off and that had been given to him by the Government. Mr. Vaile came in, and as Mr. Vaile was not an original bidder he took routes that had been awarded to Miner and to Peck and to John W. Dorsey. By the division Stephen W. Dorsey came into possession of routes that he never had bid off, because he never bid for one. Consequently as he went along with those routes, he needed and he had oftentimes the affidavit or the certificate of the original contractor. That was a necessity. Otherwise the division could not have been carried out. Anything that arises from the necessity of the case does not tend to show any conspiracy or any illegal partnership. I hope you understand perfectly that on the 6th day of April, 1879, these routes were divided and Stephen W. Dorsey took his share

because they at that time owed him between sixteen and eighteen thousand dollars.

What more did he do, gentlemen? He agreed at that time that he would refund to John W. Dorsey all the money he had expended. That amount was about ten thousand dollars. It was nine thousand and something. He also agreed that he would refund to John M. Peck, who is now dead, the money he had expended, which was between nine and ten thousand dollars. He also agreed that he would take the routes for the money he had expended, and that was between sixteen and eighteen thousand dollars. So, when those routes were turned over to him they were taken in full of over sixteen thousand dollars advanced by him, ten thousand dollars that he was to give to his brother, and ten thousand dollars that he was to give to John M. Peck—in the neighborhood of thirty-eight thousand dollars in all. Speaking of the sum without interest it amounted to thirty-six thousand dollars. Those routes were turned over to him. Gentlemen, it was not done in secret. When that division was made, the law having provided no way for A to assign a contract to B, that assignment had to be accomplished by a subcontract, and consequently subcontracts had to be given to Vaile, subcontracts to John R. Miner, and subcontracts to S. W. Dorsey, and yet the original contractor was still held by the Government. When the subcontract was made, it was for the entire amount of the pay; not one dollar remained for the original contractor. Now, I want to state to you what we are going to prove about that. After the division was made, to show you the interest taken by the arch-conspirator, we will prove these facts: That when the routes awarded to him by chance, on the 6th day of April, 1879, had been awarded, he left the city of Washington in a few days, and went to New Mexico; that he returned here on the 15th or 16th of May; that he left again on the 19th of May, and went to Arkansas; that from Arkansas he went to New Mexico, and returned to Washington on the 21st day of June, and that on the 27th of

June he left for New Mexico. The next time he visited Washington was in July of the following year, 1880. He remained here one day, left and returned again to witness the inauguration of General Garfield. From June 27, 1879, up to the present hour I challenge these gentlemen to show that Stephen W. Dorsey ever wrote one line, one word, one letter, to any officer of the Post-Office Department. I challenge them to show that he ever took the slightest interest in any star route, or said one word to any human being about that business, except in explanation when attacked by the Government or in the newspapers. Now, gentlemen, after the division of these routes what did Stephen W. Dorsey do? This is a story, complicated, it may seem, perfectly plain when you understand the surroundings. It is a story necessary for you to know. After he got these routes what did he do? Did he want them? Did he want to engage in carrying the mail of the United States? Was that his business? At that time he had a ranch in New Mexico where he was raising cattle. That was his business, and is up to to-day. Did he want to stay here? Did he want to attend to these contracts? That is for you to determine. Did he want to enter into some partnership by which the Government was to be fleeced? That is for you to say. I tell you he had another business. I tell you he had a ranch in New Mexico, and we will prove it to you, and that ranch was of more importance to him than all the star routes in the United States. We will show you that at that time he could not have afforded to waste his time on these routes; that the business he was then engaged in was too profitable to waste any time in the mail business. Profitable as these gentlemen appear to think it was, what did he do? Just as soon as he could make the arrangement he went to a gentleman living in Pennsylvania by the name of James W. Bosler. Who is Bosler? He is a man well acquainted with the business of contracting with the Government. He has been in that business for years and years. He is a man of ample fortune, excellent reputation, considered by

his friends and neighbors to be a gentleman and an honest man. He went to him. That we will show you. He said to Mr. Bosler, "I have advanced money by the indorsement of a note. I am in a business that I do not understand. We have had to divide the routes in order for me to have security for my debt. I want to turn these routes over to you. I am not acquainted with the business of carrying the mail. I know absolutely nothing about it. I want you to take it." How did he turn it over? We will show. He said to Mr. Bosler, "You take all the routes that have been given to me; every one. You run them and you pay me back my money, and then we will divide the profit." Mr. Bosler said he was not very well acquainted with post-office business, but he understood how to transact any ordinary business, and he would take them. That is all there is to it. He took the routes; every one. I believe that he took absolute control within a few months of the 6th day of April. I do not know but the warrants for the first quarter were paid or came in some way to S. W. Dorsey. But for the second quarter Mr. Bosler took them, and from that day to this Mr. Bosler has controlled those routes. He has carried every mail or has contracted with the man who did carry it. Every solitary thing that has been done from that day to this has been done by him. Every dollar has been collected by Mr. Bosler, and every dollar has been disbursed by Mr. Bosler. And before we get through I am going to tell you how all the routes that were given to Mr. S. W. Dorsey came out. Let me tell you how they came out. Mr. Bosler has carried the mail, paid the expenses, kept the accounts, and, gentlemen, I am going to tell you how much he made out of this vast conspiracy that has convulsed that part of the moral world that has been hired and paid to be convulsed. I am going to tell you exactly how we came out on all this business. I will give you the product of all this rascality, of all this conspiracy, of all the written and spoken lies; I will tell you our joint profit on this entire business; a business that promised to change the adminis-

tration of this Government ; a business about which reputations have been lost, and no reputations will be won ; counting it all, every dollar, and taking into consideration the midnight meetings, the whisperings in alleys, the strange grips and signs that we have had to invent and practice, you will wonder at the amount. I will give it to you all. Mr. Bosler has kept the books, has expended every dollar, collected every warrant, and I say to you to-day that the entire profit has been *less than* ten thousand dollars, not enough to pay ten witnesses of the Government. Our profits have not been one-fiftieth of the expense of the Government in this prosecution—not one-fiftieth, and I say this, gentlemen, knowing what I am saying. It is charged by the Government that these gentlemen were conspirators ; that they dragged the robes of office in the mire of rascality ; that they swore lies ; that they made false petitions ; that they forged the names of citizens ; that they did all this for the paltry profit of ten thousand dollars. That is what we will show you. And the moment this reform administration swept into power they cut down the service on these routes. They not only did that, but they refused to pay the month's extra pay, and they committed all this villainy in the name of reform. And do you know some of the meanest things in this world have been done in the name of reform ? They used to say that patriotism was the last refuge of a scoundrel. I think reform is. And whenever I hear a small politician talking about reform, borrowing soap to wash his official hands, with his mouth full and his memory glutted with the rascality of somebody else I begin to suspect him ; I begin to think that that gentleman is preparing to steal something. So much, then, for the conspiracy up to this point, up to the division of these routes in 1879. Now recollect it.

Now, the next charge that is made against us, and it is a terrific one, is that these defendants, my clients, have filled the Post-Office Department with petitions—false petitions ; forged petitions. I want to tell you here to-day that these gentlemen

will never present any petitions upon any route upon which my clients are interested that they will claim was forged—not one. Have we not the right, gentlemen, to petition? Has not the humblest man in the United States a right to send a petition to Congress? Has not the smallest man—I will go further—has not the meanest man the right to petition Congress? Why, it is considered one of our Constitutional rights not only, but a right back of the Constitution, to make known your grievances to the governing power. Every man always had a right to petition the king. There is no government so absolutely devoid of the spirit of liberty that the meanest subject in it has not the right to express his opinion to the king—to the czar. Upon what meat do these officers feed that they are grown so great that an ordinary citizen may not address a petition to one of them? Now, I ask you, if you were living in Colorado and could get a mail once a week, have you not the right to petition your member of Congress to have it three times a week? Do you not know that every member of Congress from every State, every delegate from every Territory, is judged by his constitutents by the standard of what he does. By what he does for whom? By what he does for them. They send a man to Congress to help them, and they expect that man to get them a mail just as often as any other member of Congress gets his people a mail, do they not? And if he cannot do that they will leave that young gentleman at home. They will find another man. It is the boast of a member of Congress when he returns to his constitutents, "I have done something for you. You only had a mail here once a week. I have got it four times a week, gentlemen." "Here is a river that was navigable. I have got a custom house." "Here is a great district in which the United States holds a court and I have an appropriation for a court-house." Up will go the caps; they will say, "He is the man we want to represent us next session." But if he sneaks back and says, "Gentlemen, you do not need a court-house, you have mails often enough," the reply of the people is, "And you have been to Congress often

enough." That is nature, and no matter how highly we are civilized when you scratch through the varnish you find a natural man.

Now, then, every member of Congress felt it was his duty, his privilege, and his leverage, to have the mails established, and when the people got up petitions he would indorse them. He would look at the petitions. There was the principal man, you know, in his town. He would look down a little farther. There was a fellow that had an idea of running against him. He would look down a little farther, and there was the man who presented his name at the last convention ; there is the fellow who subscribed three hundred dollars towards the expenses of the campaign. That is enough. He turns it right over—"I most earnestly recommend that this petition be granted. So and so, M. C." Then he would put it in his coat-pocket, and he would march down to General Brady with a smile on his face as broad as the horizon of his countenance. He would just explain to the gentleman that there are miner's camps springing up all over that country, towns growing in a night like mushrooms, Providence just throwing prosperity away in that valley ; that they have to have a daily mail then and there, and he would show this petition. In three weeks more there would come fifty others, and it would be granted. Why, even the counsel for the prosecution would have done the same, strange as it may appear. They would have done just the same—maybe worse, maybe better. The Post-Office officials might have granted more to them.

Now, I have always had the idea that it was one of my rights to sign a petition ; that no man in this country could grow so great that I had not the right just to hand the gentleman a paper with my opinion on it. Do you know I do not think anybody can get so big that an American citizen cannot send a letter to him if he pays the postage, and in that letter he can give him his opinion. There is no fraud about that ; not the slightest. These men all out through the mountains, men that went out there, you know, to hunt for silver and for gold, live

in little camps of not more than twenty or thirty, maybe, but they wanted to hear from home just as bad as though there had been five hundred in that very place. And a fellow that had dug in the ground about eleven feet and had found some rock with a little stain on it and had had the stain assayed, wanted to hear from home right off. He stayed there and dreamed about fortune, palaces, pictures, carriages, statues, and the whole future was simply an avenue of joy upon which he and his wife and the children would ride up and down. He wanted to write a letter right off. He wanted to tell the folks how he felt. Do you think that man would not sign a petition for another mail? Do you think that fellow would vote to send a stupid man to Congress who could not get another mail? He felt rich ; he was sleeping right over a hole that had millions in it, and he had not much respect for a Government that could not afford to send a millionaire a letter.

Now, Mr. Bliss tells you that we forged petitions, and in only a few moments, as the Court will remember, he had the kindness to say that anybody in the world would sign a petition for anything, and the question arises if people are so glad to sign petitions why should we forge their names. Do you not see that doctrine kind of swallows itself. You certainly would not forge the name of a man to a note who was hunting you up to sign it. And yet the doctrine of the Government is that while the whole West rose *en masse*, each man with a pen in his hand and inquiring for a petition, these defendants deliberately went to work and forged it. It won't do, gentlemen. Oh, my Lord, what a thing a little common sense is when you come to think about it, when you come to place it before your mind.

Now, the next great trouble in this case, gentlemen, is that we bid on routes that were not productive. When you remember that Congress made all these routes—now Congress did it ; we did not do it—you will protect us. We did not make a solitary route upon which we bid, strange as it may appear. Congress, with the map of the Territories and

the States of the Union before it, marked out all the routes. Congress determined where these routes should run. And yet this case has been tried as though in reality we were the parties who determined it.

Now, let me say something right here. It is for Congress to determine first of all on what routes the mail shall be carried. I want you to understand that, to get it into your heads, way in, that Congress determined that question, and that there has to be a law passed that the mail shall be carried from Toquerville to Adairville, from Rawlins to White River. That law has to be passed first, and Congress has to say that that route shall be established. Now, get that in your minds. I give you my word we never established a mail on the earth. That was done by Congress, and the moment Congress establishes a route it becomes the duty of the Second Assistant Postmaster-General to put the service upon that route, and the duty of the First Assistant Postmaster-General to name the offices on that route. Is not that true? That is the doctrine. Now, that had all been done before we entered into a conspiracy. These routes had not only been established, but the Government had advertised for service on these routes, and we bid. That was our crime.

These gentlemen said, I believe, at one time, that they were about to lift a little of the curtain, to expose the action of Congress. You see this suit has threatened the whole Government. If the Constitution weathers this storm it will be in luck. They were going to raise the curtain. They were going to be like children hanging around a circus tent. One lifts it up and hallooes to another, "Come quick, I see a horse's foot." They said that they were going to show the rascality of Congress. They have never done it. I suppose the reason may be that their pay depends upon an act of Congress, but they let that alone. Now, they say that Congress committed a great mistake. Why, they say they were routes that were not productive, and we knew it, and that when the people asked for expedition and increase

on a route that was not productive we were guilty of fraud.

Now, gentlemen, let us see: There are not a great many productive post-offices in the United States. They say that a post-office that is not productive should be wiped out. Let me say to you, you cut off the post-offices that are not productive and you will have thousands the next day that are not productive. It is the unproductive offices that make others productive. You cut off those that are not productive and you will have double the number that are not productive. You cut off all those that are unproductive and you will have nothing left but the mail line. You might say that there is not a spring that flows into the Mississippi that is navigable. Let us cut off the springs. Then what becomes of the Mississippi? That is not navigable either. It is on account of the streams not navigable, emptying into one, that the one into which they empty, becomes navigable. And yet, these gentlemen say in the interest of navigation, "Let us stop the springs because you cannot run a boat up them." That is their doctrine. There is no sense in that. You have got to treat this country as one country. You have got to treat the post-offices business as a unit for an entire country. You have got to say that wherever the flag floats the mail shall be carried, wherever American citizens live they shall be visited with the intelligence of the nineteenth century. That is what you have got to say. You have got to get up on a good high plane, and you have got to run a great Government like this that dominates the fortune of a continent, and you have got to run it like great men. There has got to be some genius in this thing and not little bits of suspicion.

Productiveness! Let us see. We are informed by Mr. Bliss, who is paid for saying it, otherwise he would not, that the West is perfectly willing to have mail facilities at

the expense of the East. I do not think the gentleman comprehends the West. There is nothing so laughable, and sometimes there is nothing so contemptible, as the egotism of a little fellow who lives in a big town. Some people really think that New York supports this country, and probably it never entered the mind of Mr. Bliss that this country supported New York. But it does. All the clerks in that city do not make anything, they do not manufacture anything, they do not add to the wealth of this world. I tell you, the men who add to the wealth of this world are the men who dig in the ground. The men who walk between the rows of corn, the men who delve in the mines, the men who wrestle with the winds and waves of the wide sea, the men on whose faces you find the glare of forges and furnaces, the men who get something out of the ground, and the men who take something rude and raw in nature and fashion it into form for the use and convenience of men, are the men who add to the wealth of this world. All the merchants in this world would not support this country. My Lord! you could not get lawyers enough on a continent to run one town. And yet, Mr. Bliss talks as though he thought that all the mutton and beef of the United States were raised in Central Park, as though we got all our wool from shearing lambs in Wall Street. It won't do, gentlemen. There is a great deal produced in the Western country. I was out there a few years ago, and found a little town like Minneapolis with fifteen thousand people, and everybody dead-broke. I went there the other day and found eighty thousand people, and visited one man who grinds five thousand bushels of flour each day. I found there the Falls of Saint Anthony doing work for a continent without having any back to ache, grinding thirty thousand bushels of flour daily. Just think of the immense power it is. Millions of feet of lumber in this very country, and Dakota, over which some

of these routes run, yielding a hundred million bushels of wheat. Only a few years ago I was there and passed over an absolute desert, a wilderness, and on this second visit found towns of five and six and seven thousand inhabitants. There is not a man on this jury, there is not a man in this house with imagination enough to prophesy the growth of the great West, and before I get through I will show you that we have helped to do something for that great country.

Productiveness! Let me tell you where that idea of productiveness was hatched, where it was born, the egg out of which it came. It was by the act of March 2, 1799, just after the Revolution, and just after our forefathers had refused to pay their debts, just after they had repudiated the debt of the Confederation, just after they had allowed money to turn to ashes in the pockets of the hero of Yorktown, or had allowed it to become worthless in the hand of the widow and the orphan. In 1799, the time when economy trod upon the heels almost of larceny, our Congress provided that the Postmaster-General should report to Congress after the second year of its establishment every post-road which should not have produced one-third the expense of carrying the mail. Recollect it, and I want you to recollect in this connection that we never established a post-route in the world. We will show that, anyway, if we show nothing else. By the act of 1825 a route was discontinued within three years that did not produce a fourth of the expenses. Now, when those laws were in force the postage was collected at the place of delivery.

But in old times, gentlemen, in Illinois, in 1843, it was considered a misfortune to receive a letter. The neighbors sympathized with a man who got a letter. He had to pay twenty-five cents for it. It took five bushels of corn at that time, five bushels of oats, four bushels of potatoes, ten dozen

eggs to get one letter. I have myself seen a farmer in a perturbed state of mind, going from neighbor to neighbor telling of his distress because there was a letter in the post-office for him. In 1851 the postage was reduced to three cents when it was prepaid, and the law provided that the diminution of income should not discontinue any route, neither should it affect the establishment of new routes, and for the first time in the history of our Government the idea of productiveness was abandoned. It was not a question of whether we would make money by it or not; the question was, did the people deserve a mail and was it to the interest of the Government to carry that mail? I am a believer in the diffusion of intelligence. I believe in frequent mails. I believe in keeping every part of this vast Republic together by a knowledge of the same ideas, by a knowledge of the same facts, by becoming acquainted with the same thoughts. If there is anything that is to perpetuate this Republic it is the distribution of intelligence from one end to the other. Just as soon as you stop that we grow provincial; we get little, mean, narrow prejudices; we begin to hate people because we do not know them; we begin to ascribe all our faults to other folks. I believe in the diffusion of intelligence everywhere. I want to give to every man and to every woman the opportunity to know what is happening in the world of thought. I want to carry the mail to the hut as well as to the palace. I want to carry the mail to the cabin of the white man or the colored man, no matter whether in Georgia, Alabama, or in the Territories. I want to carry him the mail and hand it to him as I hand it to a Vanderbilt or to a Jay Gould. That is my doctrine. The law of 1851 did away with your productiveness nonsense, and when the mails were first put upon railways in the year 1838, the law made a limit, not on account of productiveness, but a limit of cost, and said the mail should not cost to exceed three hundred dollars a mile. Let me correct myself. In 1838 a law was passed that the mails might be carried by railroad provided they did not cost in excess of twenty-five per cent. over the cost of mail coaches. In 1839

that law was repealed, and the law then provided that the pay on railways should be limited to three hundred dollars a mile. So you see how much productiveness has to do with this business. In 1861 Congress provided for an overland mail. Did they look out for productiveness? The overland mail in 1861 was a little golden thread by which the Pacific and the Atlantic could be united through the great war. Just a mail, carrying now and then a letter in 1861, and they were allowed, I think, twenty or thirty days to cross. Was productiveness thought of? Congress provided that they might pay for that service eight hundred thousand dollars a year. The mail did not exceed a thousand pounds. Including everything. Some letters that were carried from this side to the other cost the Government three hundred dollars apiece. What was the object? It was simply that the hearts of the Atlantic and the Pacific might feel each other's throb through the great war. That is all. Suppose some poor misguided attorney had stood up at that time and commenced talking about productiveness. In the presence of these great national objects the cost fades, sinks. It is absolutely lost. Wherever our flag flies I want to see the mail under it. After awhile we established what is known as the free-delivery system. That was first established on the idea of productiveness. Whenever you start a new idea, as a rule, you have to appeal to all the meanness that is in conservatism. Before you can induce conservatives to do a decent action you have to prove to them that it will pay at least ten per cent. So they started that way. They said, "We will only have this free delivery system where it pays." We went on and found the system desirable, and that many people wanted it, and that the revenues of the Post-Office Department were so great that we could afford it, and we commenced having it where it did not pay. Right here in the city of Washington, right here in the capital of the great Republic, we have the free delivery system. Is it productive? Last year we lost twenty-one thousand dollars distributing letters to the attorneys for the prosecution and others. And yet now this

District has the impudence to talk about productiveness. If anybody wants to find that fact it can be found on pages 42 and 45 of the Postmaster-General's report. Productiveness! We have now a railway service in the United States. I want to know if that is calculated upon the basis of productiveness. A car starts from the city of New York, and runs twelve hours ahead of the ordinary time to the city of Chicago for the simple purpose of carrying the mail, stopping only where the engine needs water, only when the monster whose bones are steel and whose breath is flame, is tired. Do you suppose that pays? You could scarcely put letters enough into the cars at three cents apiece to pay for the trip. At last we regard this whole country as a unit for this business. We say the American people are to be supplied. We do not care whether they live in New York or in Durango; we do not care whether they are among the steeples of the East or the crags of the West; we do not care whether they live in the villages of New England or whether they are staked out on the plains of New Mexico. For the purpose of the distribution of intelligence this great country is one. Do you see what a big idea that is? When it gets into the heads of some people you have no idea how uncomfortable they feel. I have as much interest in this country as anybody, just exactly, and I am willing to subscribe my share to have this mail carried so that the man on the very western extreme, on the hem of the national garment, may have just as much as the man who lives here in the shadow of the Capitol. You see whenever a man gets to the height where he does not want anything that he is not willing to give somebody else, then he first begins to appreciate what a gentleman is and what an American should be. Productiveness! I say that all the State and Territorial lines have been brushed aside. We do not carry the mail in a State because it pays. We carry it because there are people there; because there are American citizens there; not because it pays. The post-office is not a miser; it is a national benefactor. There are only seventeen States in this Union where the income of the Post-

Office Department is equal to the outlay; only seventeen States in this Union. There are twenty-one States in which the mail is carried at a loss. There are ten Territories in which we receive substantially nothing in return for carrying the mail, and there is one District, the District of Columbia. I do not know how many miles square this magnificent territory is; I guess about six. Thirty-six square miles. How much is the loss in this District per annum? About one thousand five hundred dollars a square mile. The annual loss right here in this District is fifty-eight thousand dollars, and yet the citizens of this town are rascally enough to receive the mail, according to the prosecution. Why is it not stopped? Why is not the Postmaster-General indicted for a conspiracy with some one? This little territory, six miles square has a loss of fifty-eight thousand dollars.

If there was a corresponding loss in Kansas, Nebraska, California, Dakota, and Idaho, it would take more than the national debt to run the mail every year. And yet here in thirty-six square miles comes the wail of non-productiveness. It is almost a joke. We are carrying the mail in Kansas at a loss of two hundred and fifty thousand dollars a year, and yet Kansas has a hundred million bushels of wheat for sale. Good! I am willing to send letters to such people. It is a vast and thriving country. It contains men who have laid the foundation of future empires. I want people big enough and broad enough and wide enough to understand that the valley of the Mississippi will support five hundred millions of people. Let us get some ideas, gentlemen. Let us get some sense. There is nothing like it. We pay five hundred thousand dollars a year for the privilege of carrying the mail in Nebraska. Do you know I am willing to pay my share. Any man who will go out to Nebraska and just let the wind blow on him deserves to have plenty of mail. You do not know here what wind is. You have never felt anything but a zephyr. You have never felt anything but an atmospheric caress. Go and try Nebraska. The wind there will blow a hole out of the

ground. Go out there and try one blizzard, a fellow that robs the north pole and comes down on you, and you will be willing to carry the mail to any man that will stay there and plow a hundred and sixty acres of land. When I see a post-office clerk sitting in a good warm room and making a fuss about a chap in Nebraska for not carrying the mail against a blizzard, I have my sentiments. I know what I think of the man. In the Territory of Utah we pay two hundred and thirty thousand dollars a year for the privilege of carrying the mails, and the *males* in that country are mostly polygamists. I want you to get an idea of this country. In the State of California, that State of gold, that State of wheat, the State that has added more to the metallic wealth of this nation than all others combined, an empire of magnificence, we pay five hundred thousand dollars a year for the privilege of distributing the mail. I am glad of it. I want the pioneer fostered. I want the pioneer to feel the throb of national generosity. I want him to feel that this is his country. You see the post-office is about the only blessing he has. Every other visitor that comes from the General Government wants taxes. The Post-Office Department is the only evidence we possess of national beneficence. It is the only thing that comes from the General Government that has not a warrant, that does not intend to arrest us. In Texas, which is an empire of two hundred and seventy-three thousand square miles, a territory greater than the French empire, which at one time conquered Europe, we pay four hundred and fifty-nine thousand dollars for the privilege of distributing the mail. I am glad of it. It will not be long before that State will have millions of people and give us back millions of dollars each year, and with that surplus we will carry the mail to other Territories. A man who has not pretty big ideas has no business in this country; not a bit. We pay one hundred and eighty-nine thousand dollars for the sake of carrying letters and papers around Arkansas; one hundred and eighty-three

thousand dollars for the privilege of wandering up and down Alabama; one hundred and seven thousand dollars in Missouri; two hundred and forty thousand dollars in Ohio; two hundred and eight thousand dollars in Georgia; three hundred and twelve thousand dollars in old Virginia. When I first went to Illinois the Government had to pay for the privilege of carrying the mail in that State. Now Illinois turns around and hands six hundred and sixty thousand dollars of profit to the United States each year. She says, "You carry the mail to the other fellows that cannot afford it just the same as you carried it for us. You rocked our cradle, and we will pay for rocking somebody else's cradle." That is sense. In other words, in seventeen States we have a profit of seven million dollars. In twenty-one States, ten Territories, and the District of Columbia we have a loss of five million dollars. When we regard the country as a unit, then we make money out of the whole business. That is good. We have in the United States about a hundred and ten thousand miles of railroad now, and we pay about two hundred dollars a mile for carrying the mail on those railroads. We have two hundred and twenty-seven thousand miles of star routes, and we pay on them between twenty and thirty dollars a mile. I want you to think about it. In looking over the Postmaster-General's report I accidentally came across this fact. You know, gentlemen, the present period is a paroxysmal period of reform. We are having what is known as a virtuous spasm. We have that every little while. It is a kind of fiscal mumps or whooping-cough. I find by this report that a mail averaging twenty pounds carried in a baggage-car from Connellsville to Uniontown, Pennsylvania, is paid for at the rate of forty-two dollars and seventy-two cents a mile. Under General Brady the star routes cost between twenty and thirty dollars a mile.

Now, gentlemen, I have told you our connection with

the star-route business. I have told it all to you freely, frankly, and fully. Some charges have been made against us, and I want to speak to you about them. You understand that it often takes quite awhile to explain a charge that is made in only a few words. One man can say another did so and so. It is only a lie, and yet it may take pages for the accused man to make his explanation. The worst lie in the world is a lie which is partly true. You understand that. When you explain a lie that has a little circumstance going along with it, certifying to it, and attesting to its truth, it takes you a great deal longer to explain it than it did to tell it. The first great charge is that for us—and I limit myself to my clients—orders were antedated. That is one great charge. Let me tell you just how that was. Mr. Bliss calls attention to the fact that Mr. Brady made orders relating back, and in one case he alleged that the order was made, for the benefit of my clients, to take effect six weeks prior to its being issued. I want to explain that. A railroad was being constructed along the line of one of these routes. It may be well enough for me to say that it was the Denver and Rio Grande Railroad. The points from which the mail was carried had to be changed as the road progressed. As it grew Mr. Brady increased the service on the route to seven times a week. He increased it from the end of the railroad and he made it seven times a week because the mail on the railroad was seven times a week. We were to carry the mail from the end of the railroad, wherever that end might be. He increased the service on this route from the end of the railroad to the other terminal point; that is, he made it a daily mail so as to connect with the daily trains on the railroad. At the time the seven trips were to be put on, distance tables were sent out to postmasters at the terminal points to get the distances. Let me tell you what a distance table is. The names of the post-offices are on a

circular, and the Post-Office Department sends that circular to the postmasters along the route and they are asked to return it with the distance from each station to every other marked upon it. Now, until that table is returned it is impossible for the Second Assistant Postmaster-General to tell how far they carry the mail. This railroad was progressing every month, and as the railroad advanced the distance from the end of the railroad to the other terminal point decreased. Now, the Postmaster-General or the Second Assistant cannot fix that pay until he has a return of the distance table. But before he has that return he can order the contractor to carry the mail, and after the distance table is returned then he can make up the formal order and have that order entered upon the records of the department. That is all he ever did. I want you to understand that perfectly. It might be four weeks after the contractor was ordered to carry the mail from the termination of the railroad, or it might be five or six weeks before the distance tables were returned and the distance calculated. But do you not see it made no difference? There was first an order either by telegraph or a short order, and after the distance tables were returned then the distance was calculated, the amount of money calculated, and the regular order written up and made of record, and a warrant drawn for payment. That is all there is to it. And yet this is what Mr. Bliss calls defrauding the Government. We are charged on that kind of evidence with having defrauded the United States. We will show you that no order of that kind was made except when the distance was unknown; and that when the distance was ascertained, the formal order was made, another order having been made before that time. Let me say right here that orders of a similar nature have been made in the Post-Office Department since its establishment. Since the construction of railways there has not a month passed in

that department—certainly not a year—when such orders have not been made. And yet for the first time in the history of the Government it is brought forward against us as an evidence of fraud. We will show that the order was made exactly as I have stated.

The next badge of fraud that is charged is that after a route had been awarded to us it was increased or expedited, or both, before the stock was put on. Well, I will tell you just how that is, because you want to know. This case, apparently complicated, is infinitely simple when it is understood. There are in the United States, I believe, some ten thousand of these star routes. They are all or nearly all in some way connected. One depends upon another. It is a web woven over the entire West, and how you run a mail here depends upon how one is run there, and the effort is to have all these mails connect in a certain harmony so that time will not be lost, and so that each letter will get to its destination in the shortest possible time, and it requires not only a great deal of experience, but it requires a great deal of ingenuity. It requires a great deal of study and strict attention for a man so to arrange the routes and the time in the United States that the letters can be gotten to their destination in the shortest possible time. And yet that is the object. You can see that. Now, you may be looking at the route from A to B, and say that there is no sense in having it in that time; but if you will look at the time of other routes, if you see with what routes that connects you will say that it is sensible. Now, you go on to another route, and, gentlemen, you see that every solitary route is touched, is compromised, is affected by every other route. That is what I want you to understand.

Now, then, Mr. Bliss says that it was a badge of fraud to increase the time and the service on a route before the stock was put on. Now let me show you. Here you have

your scheme. Here is the route, we will say, from A to E. You let that for a weekly route, once a week. How fast? A hundred hours. When you get the other routes on and look at this business you see that that crosses several places where the mail is lost. That is where a day is lost, and you see, if instead of that being a hundred hours it were seventy-five hours the mail at many stations would save one day or two days. Now, then, the law vests in you the power before a solitary horse or carriage goes upon that route to say to the man to whom the contract was awarded, "You must carry that in seventy-five hours instead of one hundred hours, and you must carry it four times a week instead of once a week." If you take that power from the Postmaster-General and from the Second Assistant those offices become useless. It is impossible for any human intellect to take into consideration all the facts growing out of this service.

There is another thing, gentlemen, which you must remember, and that is that these advertisements for this service are not made the day the service is wanted. These advertisements are put out six months before there is to be any such service.

It is sometimes a year before that service is wanted, and if you know anything about the West you know that in one year the whole thing may change. That where there was not a city there may be a city, and where there was a city nothing but desolation. Now, then, the law very wisely has vested the power in the Second Assistant and the Postmaster-General to rectify all the mistakes made either by themselves or by time, and to call for faster time or for slower, that is, for less frequent trips. Now, then, you see that that is no badge of fraud, do you not? If, before you put a man or a horse on that route, the Government finds it wants twice as many trips there is no fraud in saying so, and if they find they want to go in fifty

hours instead of a hundred hours there would be fraud in not saying so. That has been the practice since this was a Government.

Now, what is the next? The next great charge against us, gentlemen, is that when they agreed to carry a greater number of trips, or any swifter time for money, Mr. Brady did not make us give an additional bond, and Mr. Bliss talked about that I should think about a day. Nearly all the time I heard him he was on that subject. "Why did they not when they were to carry additional trips give a new bond?" Well, I will tell you why: Because there is no law for it. There never was a law for it—never. And Mr. Brady had no right to demand a bond unless the statute provided for it. When I give a bond to carry the mail once a week, and the Government finds that it wants it carried three times a week, the Government cannot make me give an additional bond. Why? Because the statute does not provide for it, and Mr. Brady had not the power to enact new laws. That is all. Why, there never was such a bond given, and any bond that is given under duress, by compulsion, not having the foundation of a statute, is absolutely null and void. Everybody knows it that knows anything. And yet the gentleman comes before you and says it is a sign of fraud that we did not give an additional bond. There never was such a bond given in the history of this Government—never; and in all probability never will be unless these gentlemen get into Congress. You know the law prescribes every bond that the contractor must give, and it is bad enough without ever being increased during the contract term.

So much now for that frightful badge of fraud. I want to make this statement so you will understand it. They have the unfairness, they have the lack of candor to tell you that it is one of the evidences that we are scoundrels, that we failed to give an additional bond, and when they

made that statement they knew that by law we could not give an additional bond, and they knew that if we had given an additional bond it would not have been worth the paper upon which it was written. And yet they lack candor to that degree that they come into this court and tell you that that is one of the evidences that we have conspired against the United States. It won't do.

What is the next badge of fraud? And I want to tell you this is a case of badges, and patches, and ravelings, and remnants, and rags. It is a kind of a mental garret, full of odd boots, and strange cats, thrown at us, and altogether it is called a case of conspiracy. Another badge of fraud is that whenever we carried the mail one trip a week, and it was increased to two trips a week, Brady was such a villain that he gave us double pay; and Mr. Bliss informed the jury that they knew just as well as he did that it did not cost twice as much to give two trips a week as it did to give one. Well, who said it did? And yet they say that is an evidence of fraud. Well, let us see. There is nothing like finding the evidence.

Now, when we come to this case we will introduce a bond that we gave at that time, and when the jury read that bond they will find this, or substantially this:

It is hereby agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule, alter, increase, or extend the service, he allowing not to exceed a pro rata increase of compensation for any additional service thereby required, or for increased speed if the employment of additional stock or carriers is rendered necessary, and in case of decrease, curtailment, or discontinuance, as a full indemnity to said contractor, one month's extra pay on the account of service dispensed with, and not to exceed a pro rata compensation for the service retained: *Provided, however*, That in case of increased expedition the contractor may, upon timely notice, relinquish his contract.

Now, it is in that provided that if they call on him for double service he is entitled to double pay. That is the law, and it has been the practice, gentlemen, since we have

had a Post-Office Department. And why? Let me show you. Here is a man who carries a mail from A to Y. There are supposed to be some commercial transactions between those two places. It is supposed that now and then a human being goes from one of those places to the other, and the man who carries the mail, as a rule carries passengers and does the local business. Now, do you suppose that he would agree with the Government that he would carry the mail once a week for a thousand dollars a year, and that they might hire another man to carry it once a week for a thousand dollars a year, and maybe that other man take all his passengers and all his business. The understanding is that when I bid a thousand dollars a year for once a week, if you put it to three times a week I am to have three thousand dollars; four times a week, four thousand dollars; seven times a week, seven thousand dollars, and that has been the unbroken practice of this Government from the establishment of the Post-Office Department until to-day. You can see the absolute propriety of it, and you can see that any man would be almost crazy to take a contract on any other terms, and that contract is this: "I will carry for you so much a trip, and if you want more trips you can have them at the same price as that fixed." That is fair. That is what we did.

So much for that badge of fraud. What is the next one? It is that the pay was increased twice as much by the increase, and, as I said, that is the law.

Now let us see what is the next great badge of fraud. That we received the pay when the mail was not carried. I deny it, and we will show in this case, gentlemen, that we never received pay except when the mail was carried. And how do I know? Because General Brady established a system of way-bills, so that a way-bill would accompany every pouch in which letters were, and they would put on that way-bill the time that it got to the post-office, and

when that way-bill got to the terminal point it was sent here to Washington and filed away, and at the end of every quarter a report was made, and if a mail was behind at any post-office you would find it on that way-bill, and if they had not made the trip then they were fined. That way-bill system was inaugurated by General Brady, and under that way-bill system we carried the mail, and we could not get pay unless we had carried the mail. I call them way-bills. They are mail-bills that go with the pouch and give a history of each mail that is carried. That is all.

Now another great badge of fraud. The first was that he was to impose no fines when the mail was not carried. The next was that he was to impose fines and then take the fines off for half—fifty per cent. Now, would not that be an intelligent contract? I carry the mails. You are the Second Assistant Postmaster-General. I agree with you that if you fine me and then will take the fine off I will give you half of it. About how long would it take you to break me up? And yet that is honestly and solemnly put forward here as a fact in the case. They tell a story of a man who was bitten by a dog. Another man said to him, "I'll tell you what to do. You just sop some bread in that blood and give it to the dog; it will cure you." "Oh, my God!" says he, "if the other dogs hear of it they will eat me up." And here it is, without a smile, urged before this jury that we made a bargain that a fellow might fine us for the halves. Well, there may be twelve men in this world who believe that. They are unfortunate.

The next charge is that a subcontract was made for less than the original contract. Well, that is where most of the money in this world is made. Thousands and millions of men have made fortunes by buying corn at sixty cents a bushel to be delivered next February, and selling the same corn for seventy cents. There is where fortunes live. The difference between a contract and a subcontract is the

territory of profit in which every American loves to settle. You make a contract with the Government to furnish, say, a thousand horses of a certain kind for one hundred and fifty dollars apiece. You go and make a subcontract with some one to furnish you those same horses for one hundred and twenty-five dollars apiece. Is that a fraud? You have taken upon yourself the responsibility and if your subcontractor fails you must make it good. There is no harm in that.

Suppose I agree with you to-morrow that if you will furnish me one thousand bushels of wheat on the first day of January, I will give you one thousand five hundred dollars, and I find out that you made a bargain with another fellow to do it for a thousand dollars. If I am an honest man I suppose I will jump the contract, won't I? Not much. If I am an honest man I will say, "Well, you made five hundred dollars; I am glad of it; good for you." But the idea of the prosecution is that the moment Brady saw a subcontract for less than the original contract he should have had a moral spasm, and said, "I won't carry out the contract; I will swindle you, I will rob you, and I will do it in the name of virtue." And that is the meanest way a man ever did rob—in the name of virtue, reform. So much for that. But if you ever make a contract with this Government and can make a subcontract at the same price you do it as quick as you can.

The next is, that whenever he discontinued a route or any part of a route, rather, he gave us a month's extra pay; you heard that, did you not? He was on that subject about a half a day. How did he come to do that? I will tell you. There is nothing like looking:

> And in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor one month's extra pay on the amount of service dispensed with.

That is first the law, secondly the contract, and thirdly it

was made in the interest of the United States. And why? Suppose the United States made a contract with a man to carry a mail from New York to Liverpool, and in consequence of that contract the man bought steamships to perform the service, and then the United States made up its mind not to carry the mail. That man might get damages to the amount of hundreds and thousands of dollars. Therefore the United States endeavored to protect itself and say the limit of damage shall be one month's pay, and that has been the law for years, and that law has been passed upon by the Supreme Court of the United States. It was passed upon in the case of Garfielde against the United States, where he claimed greater damages because he had all the steamships to carry the mail from San Francisco to Portland, and the Supreme Court said it made no difference what his expense had been. He was bound by the letter of the law and the contract, and could have only one month's extra pay as his entire damage.

Now, these gentlemen bring forward a law to protect the United States Government, and they bring that forward as an evidence of conspiracy, as evidence of a fraud. Nothing could be more unfair, nothing on earth could show a greater want of character. Now, let us see what else.

The next great charge is false affidavits. They tell you that we made lots of them; that we just had them for sale. False affidavits! And that Mr. John W. Dorsey made two false affidavits in two cases. The evidence will show that he did not. The evidence will show that he made only one in each case, when we come to it. But I want to call your attention to this fact, that in one case one affidavit was made where it said the number of men and horses then necessary was eight, that on the expedited schedule it would be twenty-four. Three times eight are twenty-four. The second affidavit said the number of men and horses then was fifteen and the number on expedition and increase

would be forty-five. Three times fifteen are forty-five. So that the amount taken from the Government would be exactly the same on both affidavits. You understand that. For instance, if it took five horses and men to do the then business, and would require fifteen to do the expedited and increased business, then you would be entitled to three times the amount of pay. So in this case one affidavit said it took eight and would take twenty-four, the other affidavit said it took fifteen and would take forty-five. Three times eight are twenty-four. Three times fifteen are forty-five. So that the amount of money taken from the Government would be exactly the same under each affidavit. Now, that is all there is of that.

In the next case, where he made two affidavits, I find that by the second affidavit it took, I think, thirteen thousand dollars less from the Government, and yet they call the second affidavit a piece of perjury. And here is one thing that I want to impress upon all your minds. Where you not only carry the mail but carry passengers it is an exceedingly difficult problem to say just how many horses and men it requires to carry the mail, and then how many men and horses it requires to carry the passengers. It is hard to make the divide you understand—very hard. You can tell, for instance, the cost of mounting a railroad for a hundred miles, but it is very difficult to tell the cost of the bridges or what the spikes cost or what the deep cuts cost. You can take the whole together and say it cost so much a year. So in this case we can say it requires so many men and horses doing the business that we are doing, but it is almost impossible for the brain to separate exactly the passengers, the package business, from simply carrying the mail. As I said before, men will differ in opinion. Some men will say it will take ten horses, others twenty, others twenty-five, and then the next question arises, and I want to call particular attention to that question, and that is,

whether the law means only the horses absolutely carrying the mail; whether the law means by carriers only the men who ride the horses or drive the wagons. Now, I will tell you what I mean. I undertake to carry the mail, we will say from Omaha to San Francisco. How many men will it take? Now, I will count all the men who are driving the stages, all the men who are gathering forage, all the men who are attending to that business in any way, and if on the way I have blacksmiths' shops where my horses are shod I will count those men. If I have men engaged in drawing wood a hundred miles, I will count those men. In other words, I will count all the men I pay, no matter whether they are keeping books in New York or carrying the mail across the desert. I will count all the men I pay; so will you. What horses will you count? All the horses engaged in the business; those that are drawing corn for the others, as well as the rest, will you not? There is an old fable that a trumpeter was captured in the war and he said to his captor, "I am not a soldier, I never shot anybody." "Ah," they said, "but you incited others to shoot, and you are as much a soldier as anybody; we want you."

Now, I say that we are entitled to count every man who carries the mail, and every man necessary to perform that service. So do you. Now, there we divide. The Government says we shall count simply the men carrying the mail, nobody else, and we shall count simply the horses in actual service. That is nonsense. For instance, you have got to have thirty horses. They are going all the time. Do you depend on just that thirty? No, sir. If one gets lame you cannot carry the mail. You have got to have twenty or thirty horses in your corral, in the stables, so that if one of the others gives out you will have enough. That is one great question in this case, gentlemen. What I say to you now is that on every one of these routes in

which my clients are interested, or, I may say, in which anybody is interested, the evidence will be that the affidavits were substantially correct. In many cases there was a far greater difference between the men and horses they used and the men and horses that were afterwards necessary.

You must take another thing into consideration. In a country where there are Indian depredations one man will not stay at a station by himself. He wants somebody with him; he wants two or three with him, and the more frightened he is the more men he will want. On that route from Bismarck to Tongue River, as to which it was sworn it would take a hundred and fifty men, the statement was made at a time when the men would not stay separately; that they wanted five or six together at one station; that they wanted men out on guard and watch. You will find before we get through, gentlemen, that the affidavits do not overstate the number. You will find in addition that these petitions were signed by the best men; that that service was asked for by the best men, not simply in the Territories, but by some of the best men in the United States; by members of Congress, by Senators, by generals, by great and splendid men, men of national reputation. So when we come to that we will show to you that the affidavits made were substantially true. There is another charge that has been made, and that is that the affidavits in Mr. Peck's name were not made by him; that he never signed these affidavits.

Yet, gentlemen, we will prove to you as the Government once proved by Mr. Taylor, a notary public in New Mexico, that Mr. Peck appeared personally before him; that he was personally acquainted with Mr. Peck, and that he signed and swore to those affidavits in his presence. That we will substantiate in this trial as the Government substantiated it in the other. These, gentlemen, are among

the charges that have been made against us. I say to you to-day they will not be able to show that we ever put upon the files of the Post-Office Department a solitary letter, a solitary petition, a solitary communication that was not genuine and true. Not one. They cannot do it. They never will do it. You will be astonished when you hear these petitions to find the Government admitting that they are true. If they do not read them we will read them. That is all.

Now, I have stated to you a few of the charges made against my clients up to this point. I want to keep it in your mind. I want each man on this jury to understand exactly what I say. Let us go over this ground a little. I want to be sure you remember it. In the first place, S. W. Dorsey was not interested in these routes. All the bids were made by John W. Dorsey, John M. Peck, John R. Miner, and a man by the name of Boone. All the information was gathered by Mr. Boone by sending circulars to every postmaster on the routes. Upon that information John W. Dorsey, John M. Peck, and John R. Miner made their calculations and made their bids, numbering in all about twelve hundred. Of that number they had awarded to them a hundred and thirty-four contracts. Recollect that. After those contracts were awarded to them they were without the money to put the stock on all the routes, because more contracts were awarded than they expected. Thereupon John R. Miner borrowed some money from Stephen W. Dorsey and kept up that borrowing until the amount reached some sixteen or eighteen thousand dollars. Don't forget it. After it got to that point Mr. Dorsey started for New Mexico. At Saint Louis he met John R. Miner, then coming from Montana, and John R. Miner said to him, "We have got to have some more money of you;" and Dorsey replied, "I have no more money to give you." Miner then said, "You give your note or indorse mine for

nine or ten thousand dollars." Dorsey replied, "If you will give me post-office orders and drafts, not only to secure the note I am about to indorse or make for you, but also to the amount of the money I have advanced for you, I will give the note." That was agreed upon. Thereupon he gave the note. It was discounted in the German-American National Bank, and Mr. Miner deposited with the note the orders on the Post-Office Department, not only to secure the note, but the sixteen thousand dollars that Dorsey had before that time advanced. Dorsey went on to New Mexico, and in May or July of that year another law was passed, allowing a subcontractor to put his subcontract on file. After he had advanced that money and indorsed or signed the note, they made the contract with Mr. Vaile, turning these routes over to him and giving him subcontracts on all these routes. When Stephen W. Dorsey came back from New Mexico in December of that year he found that the note at the German-American National Bank had been protested, and that his collateral security was at that time worthless, because the subcontracts had been filed and these subcontracts cut out the post-office orders or drafts. Thereupon he wanted a settlement. Matters drifted along until April, 1879, and then a settlement was made. I have told you that from the time the routes were given to Mr. Vaile until that time nobody had the slightest thing to do with them except Mr. Vaile; that in April, 1879, the division was made; that Mr. Vaile paid the note at the German-American National Bank; that the division was made, as I told you, by Mr. Vaile drawing one route, Mr. Dorsey one, and Mr. Miner one, and keeping that up until they were all drawn. I forgot to tell you before that Mr. S. W. Dorsey had sixteen thousand dollars, to which, if you add the interest, it would be about eighteen thousand dollars; that John W. Dorsey had ten thousand dollars and John M. Peck had ten thousand dollars, and when that di-

vision was made Stephen W. Dorsey agreed to pay John W. Dorsey ten thousand dollars, and to pay John M. Peck ten thousand dollars for his interest. Gentlemen, he did pay John W. Dorsey ten thousand dollars, and he did pay the same amount to Peck, and from that day to this John W. Dorsey has never had the interest of one solitary cent in any one of these routes. He was simply paid back the money that he expended. Not another cent. John M. Peck never made by this business one solitary dollar. He simply received back the money he had expended. After he had paid back that money to both of these men, Stephen W. Dorsey took these routes with a debt to him of between sixteen and eighteen thousand dollars. Now, as to Mr. Rerdell. They say he was the private secretary of Stephen W. Dorsey. He never was; not for a moment, not for a single moment. He attended to some of this business. I have no doubt that the Government imagine they can debauch somebody in order to get information. I give them notice now—GO ON. There is no living man whose testimony we fear. There is no living lawyer who has the genius to make perjury do us harm. I want you to understand it. And I want *them* to understand that I know precisely what they are endeavoring to do. There is only one way for them to surprise me, and that is for them to do a kind thing.

Now, gentlemen, at that time—I want you to remember it; I do not want you to forget it—when these routes came to Mr. Dorsey, he, not understanding the business, turned it over to Mr. James W. Bosler. Mr. Bosler, as I told you before, is a man of wealth. But, say these gentlemen, "While these routes were in your possession, and while Stephen W. Dorsey had an interest in them he asked men to sign petitions in favor of an increase of trips and decrease of time." What if he did? Suppose you have a house out here somewhere; you can petition to have a street opened,

even if you have the contract for paving the street. You have a right to petition to have a schoolhouse located in your neighborhood even if you have children. There is no harm about that. You certainly can petition to have cows prevented from running at large even if there is no fence around your yard. I think you could do so without being indicted for conspiracy. I think a man might start a subscription for a church, even if he owned a brick-yard and expected to sell bricks to build it. Now, suppose I had a contract to carry the mail through the State of California from one end to the other once a week, is there any harm in my asking the people of that country to petition to have it carried twice a week? Do you not remember what I told you? All the members of Congress out there, when they go home want to say to the people when they meet at the convention with all the delegates on hand. "Why, gentlemen, you did not used to get the *New York Herald* or *New York Times*, or *The Sun*, until it was two weeks old, and now it is only a week old. Where you only had one mail I have given you three. I have got fifty thousand dollars to improve your harbor, and one hundred thousand dollars for a new custom-house. Look at me, gentlemen, I am a candiate for re-election." That is natural. This Court will instruct you that any man who is carrying a mail anywhere in the United States has the right to use his influence in getting up petitions for the increase of that service or the expedition of that time. They say Dorsey did this. What of it? They say Dorsey tried to manufacture public opinion. That is what these gentlemen of the prosecution have been doing for eighteen months, and now they object to the manufacture of public opinion. Public opinion is their stock in trade.

Leaving that charge, every man who has a contract for carrying the mail has the right to call the attention of every editor in that country to the fact that they need more

mail service. He has the right to send his agents there and if the people want to petition for more service, and if Congress is willing to give them more service, no human being has a right to complain in this manner and in a criminal court. If any offence has been committed it is of a political nature. If a member of Congress gets too much service his people can keep him at home. If he does too much for his locality they need not elect him the next time. It is a political offence for which there is a political punishment and a political remedy. So much for the right of petition. I am perfectly willing to tell all he did in regard to the increase of service and the expedition.

While I am on that point I want you to distinctly understand what increase is and what expedition is. Increase of service means more of the same kind. Suppose I am to carry the mail from one place to another. We will call it from *Si*-Wash to *Oo*-Ray. If I am to carry that mail once a week for five hundred dollars and they want it twice a week, I have one thousand dollars, but do not carry it any faster. That is an increase. Suppose I am carrying it in say two hundred hours and they want it carried in half that time. That is what they call expedition. Now, the question is as to the difference in cost of carrying the mail at six miles an hour, or at two and a half, or two, or one and a half. If I carry it slowly, I can go at a reasonable rate in the day and can lie by at night. I want you to understand distinctly the difference between increase of service, which is more of the same kind, and expedition, which means the same kind at a faster rate. Now, I can carry the mail twenty miles and back in a day and do that a great deal easier than if I were to make the distance in four or five hours. The difference is just about the same with a locomotive as with a horse. If a train runs twenty miles an hour and you want to increase its speed to thirty, it will cost altogether more than twice as much as it does

to run it at twenty. If you want to increase it still further to forty or sixty, it will cost at sixty more than three times as much as at twenty. The cost increases in an increased proportion. I want you to understand that. Now, we are charged with having done some frightful things on several of these routes, and for three days and a half your ears were filled with charges of the rascality we have perpetrated. We had some ten or eleven routes, and we are charged with having defrauded the Government on those particular routes. Let us see what my clients did. Do not understand me as saying that because my clients have done nothing the other defendants have. I do not take that position. I take the position that according to the evidence in this case there is nothing against any of these defendants. Leave out passion, prejudice, falsehood, and hatred and there is absolutely nothing left. If you will take from Mr. Bliss's speech all the mistakes he made in law and fact, there will be nothing left to answer; not a word. But I think it due to my client, gentlemen, my client who is not able to be in this court, my client who sits at home wrapped in darkness, that I should answer every allegation touching every route in which he was interested. I think it due to him. [Resuming]

I will call your attention to a few of the routes, possibly to all, in which my clients were interested. It will take but a short time. I want you to know whether or not these routes were important, whether it was proper to carry the mails as they were carried, whether it was proper that they should be carried from once to seven times a week, and whether it was proper that the speed should be expedited. Now, you may think after hearing the evidence that there were some routes that never should have been established; but that does not establish a conspiracy. That simply establishes the fact that Congress created routes where they were not absolutely necessary. You may come to the conclusion that General

Brady ordered more trips on some of these routes than he should have ordered. That does not establish a conspiracy. The most that it could establish would be extravagance, and extravagance is not a crime. If it were, the penitentiaries of the day would not be large enough—or rather *would* be large enough, and too large, to hold the honest men. You may say after you have heard the evidence that the time was faster than it need be; but you must take into consideration all the connecting routes, and even if you should so feel, it is for you to say whether that establishes any conspiracy. All these things must be taken into consideration.

We will take first the route from Garland to Parrott City. * * * * *

Now, I have gone over just a few of these charges. I have shown you that they are false; that they are without the slightest shadow of foundation in fact. Now, gentlemen, after you hear all this evidence, it is for you to determine. It is for you to say whether these men entered into a conspiracy to defraud this Government. It is for you to say whether our testimony is to be believed, or whether you are to decide this case upon the suspicions of the Government. It is for you to say whether you will believe the contracts and the witnesses, or whether you will take the prejudice of the public press; whether you will take the opinion of the Attorney-General; whether you will take the letter of some counselor at law, or whether you will be governed by the testimony in this case. It is for you to say, gentlemen, whether a man shall be found guilty on inference; whether a man shall be deprived of his liberty by prejudice. It is for you to say whether reputation shall be destroyed by malice and by ignorance. It is for you to say whether a man who fought to sustain this Government shall not have the protection of the laws. It is for you [indicating a juror] and it is for you [indi-

cating another juror] and you [indicating another juror] and you [indicating another juror] to say whether a man who fought to take the chains off your body shall have chains put upon his by your prejudice and by your ignorance. It is for you to say whether you will be guided by law, by evidence, by justice, and by reason, or whether you will be controlled by fear, by prejudice, and by official power. That, gentlemen, is all I wish to say in this opening.

# CLOSING ADDRESS IN SECOND STAR ROUTE TRIAL.

## Closing Address to the Jury in the Second Star Route Trial.

MAY it please the Court and gentlemen of the jury: Perhaps some of you, may be all of you, will remember that I made one of the opening speeches of this case, and that in that opening speech I endeavored to give you the scheme or plan of the indictment. I told you, I believe, at that time, that all these defendants were indicted for having conspired together to defraud the United States. In that indictment they were kind enough to tell us how we agreed to accomplish that object; that we went into partnership with the Second Assistant Postmaster-General, he being one of these defendants, and that we then and there agreed to get up false petitions, to have them signed by persons who were not interested in the mail service, to sign fictitious names to these petitions, those names representing no actual, real, living persons; that we also agreed to have false and fraudulent letters written to the department urging this service; that in addition to all that we were to make and file false and fraudulent affidavits, in which we were to swear falsely as to the number of men and horses to be employed, and the number of men and horses then necessary; that in addition to that we were to file fraudulent subcontracts; that the Second Assistant Postmaster-General was to make false and corrupt orders, and that all these things were to be done to deceive, mislead, and blindfold the Postmaster-

General. They also set out that these orders so corruptly made were to be corruptly certified to the Auditor of the Treasury for the Post-Office Department in order that we might draw our pay. That is what is known as the general scheme or plan of this indictment. You have heard the testimony, and remember some of it. Of course you do not remember it all. Probably no man ever lived who could do such a thing. You have heard the testimony discussed, I believe, for about twenty days, so that I take it for granted you know something about it, or at least have an idea that you do. The story that we told you in the first place, and that we now tell you, is about this:

In 1877 Mr. Peck, Mr. Miner, and John W. Dorsey made up their minds to make bids and to go into the mail business. I want you to remember that there is not one word in this indictment about any false bid ever having been made. Remember that. There is nothing in this indictment about a false bond having been given; not a thing. There is nothing in this indictment charging that any of the original contracts were false. I want you to remember that. There is no evidence that any person signing any one of those contracts as security was not perfectly solvent. There is no evidence, not one syllable, that any proposal was fraudulent, or that any bid was fraudulent. How is it possible for a bid to be fraudulent? I will tell you. If you make a bid, and make a contract or enter into an agreement at the same time with some of the Post-Office officials so that your bid will be accepted when it is not the lowest, there is a fraud, and there is a fraudulent bid. There is one other way, and that is to put in a bid to carry the mail at so many thousand dollars, and then have below that straw bidders, men not responsible, and when the time comes to accept the bid of those gentlemen they refuse to carry it out, and then the law is that it shall be given to the next highest, and he refuses,

and the next, and he refuses, and the next highest, and he refuses, and so on until it comes to the highest bidder. There are such combinations and have been, I have no doubt, for many years in the Post-Office Department. That is called straw bidding, and it is fraudulent bidding. There is no such charge as that in this case. Every bid that was made was made in good faith, and every bid that was accepted was followed by a good and sufficient contract entered into by the party making the bid, and so that is the end of that.

Now, in 1877, I say these men entered into an agreement among themselves that they would bid on certain routes, and Mr. Peck, or Mr. Miner, or John W. Dorsey—they may have it as they choose—*somebody*, wrote a letter to Stephen W. Dorsey and in that letter told what they were going to do and requested him to get some man to obtain information in regard to these routes. You know that testimony. Stephen W. Dorsey was then in the United States Senate. He sent for Mr. Boone and he showed him that letter. In consequence of that Mr. Boone sent out his circulars to the postmasters all over the country, or all over the portion as to which they were to bid, and asked them about the roads, about the price of oats and corn, about the price of labor, and about the winters; in other words, all the questions necessary for an intelligent man, after having received intelligent answers, to make up his mind as to the amount for which he could carry that mail. Mr. Boone, you remember, says that he was to have at that time a certain share. There is a conflict of testimony there. Mr. Dorsey says that he told Boone that when John W. Dorsey came here they could arrange that, and he had no doubt that they would be willing to give him a share; but that he did not give it to him. The circulars were sent out and the information in some instances, and I do not know but all, came back. Then they agreed

upon the amounts they were to bid. I believe Mr. Miner came here in December, and John W. Dorsey, I think, in January, and in February the bids were made. All the amounts were put in the bidding-book issued by the Government, by Mr. Miner and Mr. Boone; all with two exceptions, and those amounts had been placed there by them, but under the advice of Stephen W. Dorsey those amounts were lowered. I remember one was upon the Tongue River route, the other route I have forgotten. Mr. Miner, Mr. Peck, and John W. Dorsey were together. Afterwards a partnership was formed between John W. Dorsey and A. E. Boone. Stephen W. Dorsey advanced some money. There is nothing criminal about that. It is often foolish to advance money, but it is not a crime. It is often foolish to indorse for another, and many a man has been convinced of that, but it is not a crime. He advanced until, I believe, he was responsible for some fourteen or fifteen thousand dollars, and thereupon he declined to advance any more. He saw Mr. Miner in Saint Louis, and said to Mr. Miner, "This is the last I am going to advance." I think he gave him some notes that he hypothecated or discounted at the German-American National Bank. He wanted security, and thereupon they gave him Post-Office drafts for the purpose of securing his debt. He would advance no more money and went away to New Mexico. Mr. Miner had a power of attorney from John W. Dorsey who was absent, and a power of attorney from John M. Peck who was absent. I believe on the 7th of August, or about that time, Mr. Boone went out. Why? They had not the money at the time to put on the service. Why? A great many more bids had been accepted than they had anticipated, and instead of getting twenty or thirty routes they got, I believe, one hundred and thirty-four routes. The consequence was they did not have the money to stock the routes. There was another difficulty.

There was an investigation by Congress, and that delayed them a month or two, and the consequence was that when the 1st of July came, the day upon which the service should have been put on, it was not only not put on, but they had not the means to do it. Then what happened? Then it was that Mr. Miner took in Mr. Vaile, and an agreement was made which bears date the 16th day of August, 1878. It was not finally signed by all the parties, I believe, until some time in September or October. Under that contract, which you have all heard read, Mr. Vaile was given an interest in this business. More than that; subcontracts were given to Mr. Vaile, and under the subcontract law which was passed on the 17th day of May, 1878, I believe, Vaile could file his subcontract in the Post-Office Department, and that rendered all Post-Office drafts or orders that had been given absolutely worthless. That was done. The subcontracts were given to Vaile under the powers of attorney that Miner held from Peck and John W. Dorsey, and of course he could act for himself. That was the situation. Stephen W. Dorsey was not here. When he returned he found that everything had been disposed of except his liability, and that he would have to pay the notes. His security was gone, and the subcontracts were filed. At that time he and Mr. Vaile had a quarrel. That is our story. In the meantime John W. Dorsey was on the Tongue River route. I believe he visited Washington in November and left word that he would like to sell out all his interests in these routes, and I believe fixed the price. Some time in November or December Mr. Vaile made up his mind to take the routes, and afterwards changed his mind. Stephen W. Dorsey was then in the Senate. On the 4th of March, 1879, his term expired. I believe on that very day, or about that day, he wrote a letter to Brady calling his attention to these subcontracts that had been filed for the protection of

Vaile and denouncing them. That was the first thing he did. Then a few days afterwards the parties met. In a little while afterwards they made a division of this entire business. You know how the division was made. Stephen W. Dorsey fell heir to about thirty of these routes, I think. In addition he had to pay ten thousand dollars to his brother and ten thousand dollars to Peck. Mr. Vaile, I think, took forty per cent. and Mr. Miner thirty per cent. Mr. Vaile and Mr. Miner went into partnership and Stephen W. Dorsey took his routes, and that ended it. Mr. Peck was out and John W. Dorsey was out. That is our story. When they divided those routes, in order to vest the property of those routes in the persons to whom they fell, it was necessary to execute subcontracts and give Post-Office drafts and things of that character. All those necessary papers they then and there agreed to make. Up to this point there is not one act established by the evidence not entirely consistent with perfect innocence; not an act. That is our story. After these routes fell to us we did what we had the right to do and what we could to make the routes of value. As business men we had the right to do it, and we did only what we had the right to do.

The next question that arises, and which of course is at the very threshold of this case, is, did these parties conspire? That is the great question. In my judgment you should settle that the first thing when you go to the jury-room. After having heard the case as it will be presented by the Government, and after having heard the charge of the Court, the first thing for you to decide is, was there a conspiracy? How is a conspiracy proved? Precisely as everything else is proved. You prove that men conspire precisely as you prove them guilty of larceny or murder or any other crime or misdemeanor. It has been suggested to you that as conspiracy is very hard to prove you should not require much evidence; that you should take into

consideration the hardships of the Government in proving a crime which in its nature is secret. Nearly all crimes are secret. Very few men steal publicly, with a band of music and with a torch in each hand. They generally need their hands for other purposes, if they are in that business. All crime loves darkness. We all know that. One of the troubles about proving that a man has committed a crime is that he tries to keep it as secret as possible. He does not carry a placard on his breast or on his back stating what he is about to do. The consequence is that it is nearly always difficult to prove men guilty as stated in the indictment. But that does not relieve the prosecution. That burden is taken by the Government, and they must prove men guilty of conspiracy precisely as they prove anything else. Is circumstantial evidence sufficient? Certainly, certainly. Circumstantial evidence will prove anything, provided the circumstances are right, and provided further that *all* the circumstances are right. A chain of circumstances is no stronger than the weakest circumstance, as a chain of iron is no stronger than the weakest link. Where you establish or attempt to establish a fact by circumstances, each circumstance must be proved not only beyond a reasonable doubt, but each circumstance must be wholly inconsistent with the innocence of the defendants. Now, let me call your attention to what I claim to be the law upon the subject, and I will call the attention of the Court to it at the same time. I will take this as a kind of test:

The hypothesis of guilt must flow naturally from the facts proved and must be consistent with them; not with some of them, not with the majority of them, but with all of them.

In other words if they establish one hundred circumstances and ninety-nine point to guilt and one circumstance thoroughly established is inconsistent with guilt or perfectly consistent with innocence, that is the end of the case.

It is as if you were building an arch. Every stone that you put into the arch must fit with every other and must make that segment of the circle. If one stone does not fit, the arch is not complete. So with circumstantial evidence. Every circumstance must fit every other. Every solitary circumstance must be of the exact shape to fit its neighbor, and when they are all together the arch must be absolutely complete. Otherwise you must find the defendants not guilty. The next sentence is:

> The evidence must be such as to exclude every reasonable hypothesis except that of guilt. In other words, all the facts proved must be consistent with and point to the guilt of the defendants not only, but they must be inconsistent, and every fact proved must be inconsistent, with their innocence.

Now, what does that mean? It means that every fact that is absolutely established in this case, must point to the guilt of the defendants. It means that if there is one established fact that is inconsistent with their guilt, that fact becomes instantly an inpenetrable shield that no honest verdict can pierce. That is what it means. That being so—and the Court in my judgment will instruct you that that is the law—let us talk a little about what has been established.

In the first place, nearly all that has been established, or I will not say established. but nearly all that has been said, for the purpose of showing that our motives were corrupt, and that we actually conspired, rests upon evidence of what we call conversations. Some witness had a conversation with somebody, three years ago, four years ago, or five years ago. The unsafest and the most unsatisfactory evidence in this world is evidence of conversation. Words leave no trace. They leave no scar in the air, no footsteps. Memory writes upon the secret tablet of the brain words that no human eye can see. No man can look into the brain of another and tell whether he is giving a true transcript of

what is there. It is absolutely impossible for you to tell whether it is memory or imagination. No one can do it. Another thing: Probably there is not a man in the world whose memory makes an absolutely perfect record. The moment it is written it begins to fade, and as the days pass it grows dim, and as the years go by, no matter how deeply it may have been engraven, it is covered by the moss of forgetfulness. And yet you are asked to take from men their liberty, to take from citizens their reputation, to tear down roof-trees, on testimony about conversation that happened years and years ago, as to which the party testifying had not the slightest interest. As a rule, memory is the child of attention—memory is the child of interest. Take the avaricious man. He sets down a debt in his brain, and he graves it as deep as graving upon stone. A man must have interest. His attention must be aroused. Tell me that a man can remember a conversation of four or five years ago in which he had no interest. We have been in this trial I don't know how many years. I have seen you, gentlemen, gradually growing gray. You have, during this trial, heard argument after argument as to what some witness said, as to some line embodied in this library. [Indicating record.] You have heard the counsel for the prosecution say one thing, the counsel for the defence another, and often his Honor, holding the impartial scales of memory, differs from us both, and then we have turned to the record and found that all were mistaken. That has happened again and again, and yet when that witness was testifying every attorney for the defence was watching him, and every attorney for the prosecution was looking at him. How hard it would be for you, Mr. Juror, or for any one of you to tell what a witness has said in this case. Yet men are brought here who had a casual conversation with one of the defendants five years ago about a matter in which no one of the witnesses was interested to the extent of one

cent, and pretend to give that conversation entire. For my part, were I upon the jury, I would pay no more attention to such evidence than I would to the idle wind. Such men are not giving a true transcript of their brains. It is the result of imagination. They wish to say something. They recollect they had a conversation upon a certain subject, and then they fill it out to suit the prosecution.

Now, I am told another thing; that after getting through with conversations they then gave us notice that we must produce our books, our papers, our letters, our stubs, and our checks; that we must produce everything in which we have any interest, and hand them all over to this prosecution. They say they only want what pertains to the mail business, but who is to judge of that? They want to look at them to see if they do pertain to the mail business. They won't take our word. We must produce them all. It may be that with such a net they might bring in something that would be calculated to get somebody in trouble about something, no matter whether this business or not. They might find out something that would annoy somebody. They gave us a notice wide enough and broad enough to cover everything we had or were likely to have. What did they want with those things? May be one of their witnesses wanted to see them. May be he wanted to stake out his testimony. May be he did not entirely rely upon his memory and wanted to find whether he should swear as to check-books or a check-book, and whether he should swear as to one stub or as to many. May be he wanted to look them all over so that he could fortify the story he was going to tell. We did not give them the books. We would not do it. We took the consequences. But what did we offer? That is the only way to find out our motive. I believe that on page 3776 there is something upon that subject. I will read what I said:

Now, gentlemen, with regard to the books. As there has been a

good deal said on that subject I make this proposition: Mr. Dorsey has books extending over a period of twenty years, or somewhere in that neighborhood. He has had accounts with a great many people on a great many subjects. He does not wish to bring those books into court, or to have those accounts gone over by this prosecution, not for reasons in this case, but for reasons entirely outside of the case. If the gentlemen on the other side will agree, or if the Court will appoint any two men or any three men, we will present to those men all our books, every one that we ever had in the world, and allow them to go over every solitary item and report to this court every item pertaining to John W. Dorsey & Co., Miner, Peck & Co., or Vaile, Miner & Co., with regard to every dollar connected, directly or indirectly, with this entire business from November or December, 1877, to the present moment, and report to this Court exactly every item just as it is. I make that proposition.

That proposition was refused. What else did I do? I offered to bring into court every check, including the time they said we drew money to pay Brady. I offered to bring in every check on every bank in which we had one dollar deposited; every one. That was not admitted. And why? Because the Court distinctly said that it rests upon the oath of the defendant at last; he may have had money in banks that we know nothing about. To which I replied at the time that if we stated here in open court the name of every bank in which we did business, and there is any other bank knowing that we did do business with it, we will hear from it. So that we offered, gentlemen, in this case, every check on every bank but one. I did not know at that time that we had ever had an account with the German-American Savings Bank; I did not find that out until afterwards. But you will remember that Mr. Merrick held in his hand the account of Dorsey with that bank; and Mr. Keyser, who, I believe, had charge of that bank, was here, and if there had been anything upon those books, certainly the Government would have shown it.

More than that; that bank went into the hands of a receiver, I think, eight months before any of these checks are said to have been given for money which was afterwards given to Brady. Now, they insist, that because we

failed to bring the books into court, therefore the law presumes that the absolute evidence of our guilt is in those books. I believe they claim that as the law. If my memory serves me rightly, Colonel Bliss so claimed in his speech. In other words, that when they give us notice to produce a book, and we do not produce it, there is a presumption against us. That is not the law, gentlemen. When they give us notice to produce a book or letter and we do not produce it, what can they do? They can prove the contents of the book or letter. In other words, if we fail to produce what is called the best evidence, then the Government can introduce secondary evidence. They can prove the contents by the memory of some witness, by some copy, no matter how; and that is the only possible consequence flowing from a refusal to produce the book or letter.

And yet, in this case, gentlemen, Mr. Bliss wishes you to give a verdict based upon two things: first, upon what we failed to prove; secondly, on what the Court would not let them prove. He tells you that they offered to prove so and so, but the Court would not let them; he wants you to take that into consideration; and secondly, that there were certain things that we did not prove; and that those two make up a case. That is their idea. Now, let us see if I am right about the law.

The first case to which I will call the attention of the Court is a very small one, but the principle is clear. It is the case of Lawson and another, assignees of Shiffner, *vs.* Sherwood, and it is found in 2 English Common-Law Reports; 1 Starkie, 314.

The COURT. Colonel Ingersoll, you cannot argue that question to the jury; you cannot cite an authority and discuss it to the jury.

Mr. INGERSOLL. Then I will discuss it with the Court; it is immaterial to me which way I turn when I am talking. I

insist that the jury must at last decide the law in this case. I will read another case to the Court, found in 9 Maryland, Spring Garden Mutual Insurance Company, *vs.* Evans.

The Court decides in this case that the only consequence of their refusal to produce the papers, they not denying that they had them, was to allow the opposite party to prove their contents. That is all ; that it could not be patched out with a presumption.

The COURT. But if afterwards they should attempt to contradict the secondary evidence the Court would not have allowed them to do it.

Mr. INGERSOLL. It does not say so.

The COURT. That is the law.

Mr. INGERSOLL. Suppose, after the other side had proved the contents, there was an offer of the actual original papers. I can find plenty of authority that they must be received.

The COURT. I have never seen such authority, but I have seen a great many to the contrary.

Mr. INGERSOLL. I have never seen an authority to the contrary that was very well reasoned. But, then, I will not argue about that, for that is not a point in this case.

The COURT. If you have the papers, and have received notice to produce them, you are bound to produce them. If you do not produce them secondary evidence is admissible to prove their contents. But after the secondary evidence has been received, the Court will not allow you then, after having first failed to produce the papers upon notice, to resort to the primary evidence which you ought to have produced upon the notice, for the purpose of contradicting the secondary evidence that was given.

Mr. INGERSOLL. Now, let me give the Court a case in point : In this very case that we are now trying, Mr. Rerdell in his statement to MacVeagh said there was a check for seven thousand dollars ; that the money was drawn upon that check ; that he and Dorsey went together to the Post-Office Department and that Dorsey went into Brady's room ; that that

money was drawn by Dorsey. That was his statement to MacVeagh and James.

The COURT. It was not his statement here.

Mr. INGERSOLL. Yes, that was his statement here, as I will show hereafter. But let me state my point. He was coming upon the stand. The check, instead of being for seven thousand dollars, was for seven thousand five hundred dollars; instead of being drawn to the order of Dorsey or to bearer, it was drawn to the order of Rerdell himself; instead of being drawn at the bank by Dorsey, it was drawn by Rerdell in person and had his indorsement upon the back of it. We were asked to produce that. I preferred not to do it until I heard the testimony of Mr. Rerdell. Why? Because I wanted to put that little piece of dynamite under his testimony and see where the fragments went, and I did. That is my answer to that.

Now, I find another case in the first volume of Curtis's Circuit Court Reports. where it is said, on page 402, that—

By the common law a notice to produce a paper——

The COURT. [Interposing.] Before we part from what you were saying, I wish to say that I do not think that the other side gave you notice to produce the checks; that is my memory.

Mr. INGERSOLL. Yes. Let me state my memory to the Court: I do not remember exactly every one of these four thousand pages of testimony; there are three or four that I may be a little dim about; but I do remember that a notice was given to us to produce everything in the universe, nearly, and that the Court held that the scope was a little too broad. I have forgotten the page, but I will tell you where it comes in: It was where Mr. Rerdell swore about the stub-book. I find the notice, may it please your Honor, on page 2255, and it was dated the 13th of February. This is the notice, and it gave the same notice to all the defendants:

You are hereby notified to produce forthwith in court, in the above entitled cause, all letters and communications, including all telegrams,

of every kind and description, purporting to come from any one of said defendants and addressed to you or delivered to you, and all memoranda in which reference is made to any contract or contracts of any one of said defendants with the United States or with the Postmaster-General for carrying the mail under the letting of 1878 on any route in the United States, or in any way referring to any contract or contracts for so carrying the mail, in which J. W. Bosler or any one of said defendants had any interest, or in any way referring to any act, contract, or proceeding thereunder, or to any payment, draft, warrant, check, or bill, or note, or to any possible loss or profit in connection with such contract or contracts, or to the management or execution thereof, or referring to any possible gain or profit to be derived by any of said defendants from contracts for carrying the mail of the United States, or to any payments under such contract, or to the distribution of the proceeds made or to be made of said payment, or to the management of any enterprise or enterprises in connection with the transportation of the mail, or to gains, profits, or losses accruing or likely to accrue from such enterprises, or to the financial means for carrying on the same; and also to produce any and all books containing any entry or entries in regard to any of the subjects, matters, checks, drafts, or payments relating or having reference to the subjects, &c., hereinbefore referred to; and also any letter-book or letter-books containing letter-press copies of letters referring to the said subject or subjects.

I believe just about that time, or a little after, another notice was given.

Mr. MERRICK. If the counsel will allow me, my impression is that that notice was deemed by the Court to be too broad.

The COURT. It was.

Mr. INGERSOLL. Then another notice was given that specified all these things.

Curtis says in this case that—

By the common law, a notice to produce a paper, merely enables the party to give parol evidence of its contents, if it be not produced. Its non-production has no other legal consequence.

I find too, that in the Maryland case they make a reference to Cooper *vs.* Gibson, 3 Camp., 303. I also have another case, to which I will call the attention of the Court, United States *vs.* Chaffee, 18 Wallace, 516. I have not the book here, but I can state what it is. My recollection of the case is

this: That an action was brought against some distillers; that by law distillers have to keep certain books in which certain entries by law have to be made. Notice was served upon the defendants to produce those books. They refused so to do; and the question was whether any presumption arose against the defendants on account of that refusal.

The COURT. I agree with you entirely that far in your law, that the mere fact of the failure to produce books or papers has no effect at all against the party declining to produce them. But it is a different question altogether, after secondary evidence has been given, in consequence of such refusal, to supply the place of the primary evidence. If the books and papers have an existence, and the party who has received the notice has refused to produce them, and the other party has given secondary evidence of the contents of such books and papers, that secondary evidence will have to stand, under those circumstances, as the proof in the case.

Mr. INGERSOLL. That is not the point. Of course that will stand for what it is worth. I was arguing this point: Can the jury hatch and putty and plaster the secondary evidence with a presumption born of the failure to produce the books and papers?

The COURT. What I mean is just this: If you should fail to produce the primary evidence, and then the secondary evidence of the contents is not contradicted——

Mr. INGERSOLL. [Interposing.] It may not be contradicted, because it happens to be inherently improbable.

Mr. MERRICK. The Government claims the law to be as your Honor has intimated, and we have formulated it in one of our prayers. But that abstract proposition is hardly applicable in the present case, for the Government claims the application of another and plainer proposition: That wherever a defendant himself takes the stand and has in his possession a certain paper which, when called upon on cross-examination to produce, he refuses, then a presumption unquestionably arises of such potency that it is difficult to resist.

Mr. INGERSOLL. There is no difference, so far as the law is concerned, whether the defendant, as a defendant, fails to produce the books and papers, or whether, in his capacity as a witness, he fails to produce the books and papers. The law, it seems to me, is exactly the same.

Now, in this case of the United States *vs.* Chaffee *et al.* (18 Wall., 544), Justice Field denounces that you should presume against the party because he fails to produce books and papers known to be in his possession. And why? I suppose a party can not be presumed out of his liberty; he cannot be presumed into the penitentiary; and you cannot make a prison out of a presumption any more than you can make a gibbet out of a suspicion.

And again, the court instructed the jury that the law presumed that the defendants kept the accounts usual and necessary for the correct understanding of their large business and an accurate accounting between the partners, and that the books were in existence and accessible to the defendants unless the contrary were shown.

That same thing has been claimed here.

The COURT. No.

Mr. INGERSOLL. We have heard it very often that this was a large business.

The COURT. You have not heard anything of that kind from the Court.

Mr. INGERSOLL. I am not saying that. I said "claimed"; if I had referred to your Honor I should have said "decided." Here is another instruction of the court:

If you believe the books were kept which contained the facts necessary to show the real amount of whiskey in the hands of the defendants in October, 1865, and the amount which they had sold during the next ten months, or that the defendants, or either of them, could by their own oath resolve all doubts on this point; if you believe this, then the circumstances of this case seem to come fully within this most necessary and beneficent rule.

He applied the word "beneficent" to a rule that put a man in the penitentiary on a presumption.

The COURT. He was conservative.

Mr. INGERSOLL. He ought to read some work on the use and abuse of words. Now, Judge Field says further:

> The purport of all this was to tell the jury that although the defendants must be proved guilty beyond a reasonable doubt, yet if the Government had made out a *prima facie* case against them, not one free from all doubt, but one which disclosed circumstances requiring explanation, and the defendants did not explain, the perplexing question of their guilt need not disturb the minds of the jurors.

That is this case exactly: that is the exact claim of Colonel Bliss in this case. Gentlemen, you have only to take into consideration, he says, what we offered to prove and what the Court would not allow us, and what the defendants failed to prove. "Why didn't they call Bosler?"

Now, gentlemen, we claim the law to be this: That while notice is given us to produce books and papers and we fail to do it, the only legal consequence is that the Government may then prove the contents of such books and papers, and that their proof of the contents must be passed upon by you.

The next thing to which I call your attention is the crime laid at our door, that we exercised the right of petition. It is regarded as a very suspicious circumstance that petitions were circulated, signed, and sent to the office of the Second Assistant Postmaster-General. Why did these people petition? Let me tell you. If you will look in every contract in this case you will find certain provisions relative to carrying the mail. Among others you will find this: That no contractor has any right to carry any newspaper or any letter faster than the schedule time; that he has no right to carry any commercial news, or to carry any man who has any commercial news about his person, faster than the schedule time. No mail can be carried by anybody except the United States, and if a community wants more mail it has no right to establish an express that will carry the mail faster, because the United States has the monopoly. Now, if you want more mail, what are you to do? You cannot start one yourself; the Government will not allow it. What

have you to do? You have to petition the Government to carry the mail faster or to carry it more frequently; and the reason you have to ask the Government to do this is because the Government will not permit you to do it; consequently you have only one resort. What is that? Petition. And in this very case I believe his Honor used this language:

> Every man carrying the mail has the right to take care of his business. He has the right to get up petitions. He has the right to call the attention of the people to what he supposes to be their needs in that regard. He has the right to do it, and the fact that he does it is not the slightest evidence that he has conspired with any human being.

Now, if the man carrying the mail has the right to call the attention of the people to their needs, have not the people the right to do all that themselves? If the man carrying the mail has the right to get up a petition, surely the people have the right; and if the people have the right, surely the man has that right. That is the only way we can find out in this country what the people want—that is, to hear from them. They have the right to tell what they want.

But these gentlemen say, "Anybody will sign a petition." Well, if that is true, there is no great necessity for forging one. Very few people will steal what they can get for the asking. If a bank or a man offers you all the money you want, you would hardly go and forge a check to get it. I will come to that in a few moments.

Now, gentlemen, according to this evidence, you have got to determine, as I said in the outset, Was there a conspiracy? The second question you have to determine is, When? In every crime in the world you have got to prove the four W's—Who, When, What, Where? Who conspired? When? What about? Where? Now I want to ask you a few questions, and I want you to keep this evidence in mind. Was there a conspiracy when

Dorsey received the letter from Peck or Miner? Had the egg of this crime then been laid? Had it been hatched at that time? Is there any evidence of it? The object then was to make some bids. It is not necessary to conspire to make bids. You cannot conspire to make fraudulent bids unless you enter into an agreement that the lowest bid is not to be accepted, or agree upon some machinery by which the lowest bid is not received, or put in a bid with fraudulent and worthless security. Will the Government say that there was a conspiracy at the time Peck or Miner wrote to S. W. Dorsey? What evidence have you that there was? None. What evidence have you that there was not? The evidence of Miner and the evidence of S. W. Dorsey. What else? Boone had not been seen at that time. John W. Dorsey was not here. Peck was not here. Peck or Miner had written the letter. Was there any conspiracy then? Is there any evidence of it? Is there enough to make a respectable suspicion even in the mind of jealousy? Does it amount even to a "Trifle light as air."

Was it when Dorsey sent for Boone? Boone says no. He ought to know. S. W. Dorsey says no. John W. Dorsey was not here. Miner had not arrived. The only suspicious thing up to that point is that Dorsey lived "in his house;" that he received this letter "in his house," and that Boone visited him "in his house." That is all. Now, if there is a particle of evidence, I want the attorney for the Government who closes this case to point it out, and to be fair. Was it when Miner got here in December, 1877? Miner says no. Boone says no. Stephen W. Dorsey says no. John W. Dorsey was not yet here. All the direct evidence says no. All the indirect evidence says nothing. Now, let us keep our old text in view. I want to ask you if there is a thing in all the evidence not consistent with innocence? Was it not consistent with

innocence that Peck and Miner and John W. Dorsey should agree to bid? Was it not consistent with innocence that John W. Dorsey met Peck at Oberlin, and that he met Miner in Sandusky? Was not that consistent with innocence? Was it not consistent with innocence for Peck to write S. W. Dorsey a letter? Was it not consistent with innocence for Dorsey to open it and read it and then send for Boone and give it to him? Boone in the meantime proceeded to get information so that they could bid intelligently. Was that consistent with innocence? Perfectly. More than that, it was inconsistent with guilt. What next? May be this conspiracy was gotten up about the 16th of January, when John W. Dorsey came here. Dorsey says no; Boone says no; Miner says no; and S. W. Dorsey says no. That is the direct evidence. Where is the indirect evidence? There is none. Ah, but they say, don't you remember those Clendenning bonds? Yes. Is there anything in the indictment about them? No. Was any contract granted upon those bonds or proposals? No. Was the Government ever defrauded out of a cent by them? No. Is there any charge in this case relative to them? No. Everybody says no. John W. Dorsey entered into a partnership with A. E. Boone after he came here. Is that consistent with innocence? Yes. No doubt many of the jury have been in partnership with people. There is nothing wrong about that. He also entered into partnership with Miner and Peck. There were two firms, John W. Dorsey & Co., which meant A. E. Boone and John W. Dorsey, and Miner, Peck & Co., which meant Miner, Peck and John W. Dorsey. Is there anything criminal in that? No. They had a right to bid. They had a right to form an association, a partnership. There was nothing more suspicious in that than there would have been in evidence of their eating and sleeping. Now, then, was this conspiracy entered into on August 7,

1878, when Boone went out? Boone says no, and with charming frankness he says if there had been a conspiracy he would have staid. He said, "If I had even suspected one, I never would have gone out. If I had dreamed that they had a good thing, I should have staid in." He swears that at that time there was not any. Miner swears to it and S. W. Dorsey swears to it. Everybody swears to it except the counsel for the prosecution. Rerdell swears to it. That is the only suspicious thing about it. Now, at that time, August 7, when Boone went out, S. W. Dorsey was not here and John W. Dorsey was not here. Who was? Miner. What was the trouble? Brady told him, "I want you to put on that service. If you don't I will declare you a failing contractor." A little while before that Miner had met Dorsey in Saint Louis, and Dorsey had said, "This is the last money I will furnish. No matter whether I conspired or not, I am through. This magnificent conspiracy, silver-plated and gold-lined, I give up. There are millions in it, but I want no more. I am through." So Mr. Miner, using his power of attorney from John W. Dorsey and Peck, took in Mr. Vaile.

I believe that Mr. Rerdell swears that the reason they took in Vaile was that they wanted a man close to Brady. According to the Government they had already conspired with Brady. They could not get much closer than that, could they? Miner was a co-conspirator, and yet they wanted somebody to introduce him to Brady. John W. Dorsey and S. W. Dorsey were in the same position. They were conspirators. The bargain was all made, signed, sealed, and delivered, and yet they went around hunting somebody that was close to Brady. Brady said, "I will declare you all failing contractors. I can't help it, though I have conspired with you. I give up all my millions. This service has got to be put on. The only way to stop it is for you to seek for a man that is close to me. You

are not close enough." Now, absurdity may go further than that, but I doubt it. You must recollect that that contract was signed as of the 16th of August. You remember its terms. At that time not a cent had been paid to S. W. Dorsey. His Post-Office drafts had been cut out by the subcontracts. Afterwards he had a quarrel with Vaile. We will call it December, 1878.

Was the conspiracy flagrant then? Let us have some good judgment about this, gentlemen. You are to decide this question the same as you decide others, except that you are to take into consideration the gravity of the consequences flowing from the verdict. You must decide it with your faculties all about you, with your intellectual eyes wide open, without a bit of prejudice in your minds, and without a bit of fear. You must decide it like men. You must judge men as you know them. Was there a conspiracy between these defendants in December, 1878, when S. W. Dorsey came back here and found out the security for his money was gone, and when he had the quarrel with Mr Vaile? Is there the slightest scintilla of testimony to show that Mr. Vaile came into this business through any improper motive? I challenge the prosecution to point to one line of testimony that any reasonable man can believe even tending to show that Mr. Vaile was actuated by an improper motive. I defy them to show a line tending to prove that John R. Miner was actuated by an improper motive when he asked Vaile to assist him in this business. I defy them to show that Brady was actuated by an improper motive when he told them, "You must put on that service or I will declare you all failing contractors." Was there a conspiracy then? I ask you, Mr. Foreman, and I ask each of you, Was there a conspiracy at that time? Have the prosecution introduced one particle of testimony to show that there was? In March was there a conspiracy? Will you call dividing, a conspiracy? Will you call going apart, coming together? If you will, then there must have been a conspiracy in March. A conspiracy to do what? A conspiracy to separate; a con-

spiracy to have nothing in common from that day forward. Mr. Vaile entered into a conspiracy then that he would have no more business relations with S. W. Dorsey. He swears that at that time nothing on earth would have tempted him to go on. That is what they call being in a conspiring frame of mind. Not another step would he go. In March they separated, and each one went his way. It was finally fixed up, and finally settled in May. John W. Dorsey was out with his ten thousand dollars, and Peck was out with his ten thousand dollars. S. W. Dorsey, for the first time became the owner of thirty routes, or something more, and Miner and Vaile of the balance, I think about ninety-six. According to that contract of August 16, John W. Dorsey only had a third interest in the routes he had with Boone, and not another cent. There was a division. If there was a conspiracy of such a magnitude, why should Boone go out of it? Why should John W. Dorsey sell out for ten thousand dollars? Why should John W. Dorsey offer Boone one-third of it? Why was Mr. A. W. Moore offered one-quarter of it?—a gentleman who could be employed for one hundred and fifty dollars a month? I ask you these questions, gentlemen. I ask you to answer them all in your own minds. Recollect, on the 16th of August there was a conspiracy involving hundreds of thousands of dollars. In that conspiracy was the Second Assistant Postmaster-General. They had the Post-Office Department by the throat. They had the Postmaster-General blindfolded. Yet Miner went to Vaile and said, "Now, just furnish a little money to put on these routes and you may have forty per cent. of this conspiracy." He was giving him hundreds of thousands of dollars. Is that the way people talk that conspire together? Would not Miner have gone to Brady and said, "Look here, what is the use of acting like a fool? What do you want me to give forty per cent. of this thing to Vaile for? I had better give twenty per cent. more to you. That would allow me to keep twenty per cent. more too, and then there will be one less to keep the secret." He never thought of that.

I want you to think of these things, gentlemen, all of you, and see how they will strike your mind. What did they want of Boone? S. W. Dorsey they say was the prime mover. He hatched this conspiracy. Miner, his own brother, Peck, and everybody else were simply his instruments, his tools. What did he want Boone for? He had a magnificent conspiracy from which millions were to come. He told Boone, "I will give you a third of it." What for? He told Moore, "I will give you one-quarter." Seven-twelfths gone already. T. J. B. thirty-three and one-third per cent. That is about all. Then sixty-five per cent. more to the subcontractors. I want you to think about these things, gentlemen. If they had such a conspiracy what did they want of Mr. Moore?

Mr. INGERSOLL. [Resuming.] Gentlemen, was it natural for S. W. Dorsey to get the money back that he had advanced, or some security for it? Was that natural? When a man seeks to have a debt secured is that a suspicious circumstance? That is all he did. He was out several thousand dollars. He wanted to secure that debt and he took another debt of twenty thousand dollars upon him as a burden. If this had been a conspiracy he could have furnished this money that he had to pay to others to put the service on the route. I leave it to each one of you if that action to secure that debt was not perfectly natural. I will ask you another question. If he was the originator of the conspiracy would he have taken thirty per cent. burdened with a debt of twenty thousand dollars? The way to find out whether there is sense in anything or not is to ask yourself questions. Put yourself in that place; you, the master of the situation; you, the author of the entire scheme. Would you take one-third of what you yourself had produced, and that third burdened with twenty thousand dollars worth of debt, and then make your debt out of the proceeds? I want every one of you to ask yourself the question, because you have got to decide this case with your brains and with your intelligence; not somebody else, but you, yourself. We want your verdict; we want your individual opinion; not some-

body else's. There is the safety of the jury trial. We are to have the opinions of twelve men, and those opinions agreeing. Where twelve honest men agree, if they are also independent men, the rule is that the verdict is right. The opinion of an honest man is always valuable, if he is only honest, and if it is his opinion, it is valuable. It is valuable if he does not go to some mental second-hand store and buy cheap opinions from somebody else, or take cheap opinions. In this case I ask the individual opinion of each one of you. I want each one of you to pass upon this evidence; I want each one of you to say whether if Dorsey had been the author and finisher of this conspiracy he would have taken thirty per cent., burdened with twenty thousand dollars of debt to others and fifteen thousand dollars of debt to himself? If you can answer that question in the affirmative you can do anything. After that nothing can be impossible to you, except a reasonable verdict. You cannot answer it that way. Why should he have cared so much about fifteen or sixteen thousand dollars with a conspiracy worth hundreds of thousands of dollars? Why run the risk of making the whole conspiracy public? Why run the risk of his detection and its destruction? You cannot answer it. Perhaps the prosecution can answer it. I hope they will try.

Mr. Ker, on page 4493, makes a very important admission.

> After they (meaning the defendants) had these contracts, there was a combination, an agreement between all these people, that they were to do certain things in order to get at the public Treasury and get more money.

What does that mean? That means that this conspiracy was entered into after the defendants obtained the contracts, so that Mr. Ker fixes the birth of this conspiracy after these contracts had been awarded to the defendants. That being so, all the bids, proposals, Clendenning letter, Haycock letter, proposals in blank, and bidders' names left out fade away.

The Chico letter I will come to after awhile. I will not be as afraid of it as were the counsel for the prosecution. I will

not, like the Levite, pass on by the other side of the Chico letter. I will not treat it as if it were a leper, as if it had a contagious disease. When I get to it I will speak about it. All these things, then, under that admission, go for naught, and have nothing to do with the case, and consequently nobody need argue with regard to them any more, although incidentally I may allude to them again. There is no doubt, recollect, after this admission. There is no clause in the indictment saying that we endeavored to defraud this Government by bids, by proposals, by bonds, or by contracts. Not a word. That is all out; in my judgment it never should have been in the case at all. What is the next thing we did? It is alleged that the moment Dorsey got these contracts he laid the foundation to defraud the Government by a new form of subcontract. Let me answer that fully, and let that put an end to it from this time on. Until May 17, 1878, the Post-Office Department did not recognize subcontractors. After these contracts came into the possession of these defendants Congress passed a law recognizing subcontractors. Consequently the contracts of the subcontractors that were to be recognized by the Government had to be somewhere near the same form as the contracts with the original contractors. The moment the contract of the subcontractor was to be recognized by the Government then it was necessary and proper to put a clause in that subcontract for expedition and a clause in that subcontract for increase of service. Why? So that the Government should know, if the route was expedited, what percentage the subcontractor was entitled to. Instead of that clause in the subcontract being evidence that Mr. Dorsey was endeavoring to swindle the Government, the evidence is exactly the other way. It was put there for the purpose of protecting the subcontractor, so that if expedition was put upon the route the Government would know what per cent. of the expedition to pay the subcontractor. If that clause had not been in that subcontract the Government could not have told how much money to pay the

subcontractor, and as a consequence the subcontract would have been worthless as security for the subcontractor. And yet a clause put in for the protection of the subcontractor is referred to in your presence as evidence that the man who suggested it was a thief and a robber. What more? They say to these witnesses, "Did you ever see such a clause as that in a subcontract before?" No. Why? The Government never recognized a subcontractor before that time, and consequently there was no necessity for such a clause. Think how they have endeavored to torture every circumstance, no matter how honest, no matter how innocent, no matter how sensible; how they have endeavored to twist it and turn it against these defendants. Gentlemen, whenever you start out on the ground that a man is guilty, everything looks like it. If you hate a neighbor and anything happens to your lot you say he did it. If your horse is poisoned he is the man who did it. If your fence is torn down he is the fellow. You will go to work and get all the little circumstances that have nothing to do with the matter braided and woven into one string. Everything will be accounted for as coming from that enemy, and as something he has done.

They say another thing: That we defrauded the Government by filing subcontracts. You cannot do it. When this case is being closed I want somebody to explain to the jury how it is possible for a man to defraud this Government by filing a subcontract. I do not claim to have much ingenuity. I claim that I have not enough to decide that question or to answer it. I can lay down the proposition that it is an absolute, infinite, eternal impossibility to fraudulently file a subcontract as against the Government. It cannot he done. Oh, but they say, the subcontractor did not take the oath. There is no law that he should take an oath and there never was. There may be at some time, but there is not now. The law that everybody engaged in carrying the mail and every salaried officer of the department shall take an oath was passed before the law of the 17th of May, 1879, allowing a subcontractor to file his subco

tract. Before that time the Government had nothing to do with the subcontractor. If he actually carried the mail ; if he actually took possession of the mail, he had to take the oath of the carrier. But I defy these gentlemen to find in the law any oath for a subcontractor. There never was such an oath. If there is one, find it. The law that every salaried officer and every carrier of the mail shall take the oath was passed years and years and years before the law was passed allowing subcontracts to be filed. What of it? Suppose a man who is a subcontractor carries the mail and does not take any oath. That is as good as to take the oath and not carry the mail. What possible evidence is it of fraud? Suppose it should turn out that the carrier did not take the oath, but carried the mail honestly. What of it? Is it any evidence of fraud? If a man tells the truth without being sworn, is that evidence that he is a dishonest man? If a man carries the mail properly and in accordance with law without being sworn to do so, it seems to me that is evidence that he is an honest fellow, and you don't need to swear him. So when a subcontractor takes a subcontract and carries the mail according to law it does not make any difference whether he swears to do so or not. Is there any evidence in this case that the subcontractors stole any letters on account of not having taken the oath? When they answer, let them point to the law that the subcontractor is to take an oath. There is no such law and never was.

Now, according to this admission of Mr. Ker, the conspiracy commenced after they got the contract. Very well. I need not talk about anything back of that. I do not know whether the admission is binding upon the Government or not. I believe the Court holds that the Government is not bound by the admission of any agent, and that the Government only authorizes an agent to admit facts. May be he is mistaken. The Government only authorizes an agent to admit the law. At any rate Mr. Ker did the very best he knew how, and he says this conspiracy commenced when they got the contracts, and so we need not go back of that unless the Government is now

willing to say that Mr. Ker has made a mistake. I lay down the proposition, gentlemen, that you need not go back of the division of these routes. Then you must go forward. What was done after that? Recollect the exact position of Senator Dorsey and the exact position of these other people.

The next claim is, although there was no conspiracy until after they got the contracts, that Senator Dorsey was interested in these contracts while he was a Senator of the United States. If they could establish that fact it would not tend to establish a conspiracy. There is nothing in this indictment about it. I admit that if he were a Senator, and at the same time interested in mail contracts, he might be tried and his robes of office stripped from him, and that he could be rendered infamous. But that is not what he is being tried for. They say he was in the Senate, and he was anxious to keep it secret. Mr. Ker says he was so anxious to keep it secret that he sent all these communications out West in Senate envelopes, so they would think a Senator had something to do with it. Then it turned out that all the envelopes were in blank; just plain white envelopes, with nothing on them, and away went that theory. If he were in the Senate and engaged in these routes also, and wished to keep it a profound secret, because if known it would blast his reputation forever, do you think he would have had all these circulars sent out in Senate envelopes and on Senate paper? If he did allow that to be done, it is absolutely conclusive evidence that he was not interested. Suppose I was trying to keep it an absolute, profound, eternal, everlasting secret that I had anything to do with a certain matter, would I write letters about it? Would I use paper that had my name, the number of my office, and the character of my business printed upon it? Would I? To ask that question is to answer it. Another thing: They claim that he was in the Senate and infinitely anxious to keep it

a secret, and yet he found Mr. Moore, a perfect stranger, and said to him in effect: "Yes, Mr. Moore; I don't know you, but I want you to know me. I am a rascal. I am a member of the Senate, but I am engaged in mail routes. I hope you will not tell anybody, because it would destroy me. I have great confidence in you, because I don't know you." That is the only way he could have had confidence in Moore. He would have to have it the first time he saw him or it never would have come. To this perfect stranger he said, "Here, I am in the Senate, but I am interested in these routes. I am in a conspiracy. I want you to go out and attend to this business. I want you to do all these things, and the reason I tell you is because I am a Senator and I want it kept a profound secret. That is the reason I tell you." That is what these gentlemen call probable. That is their idea of reasonableness and of what is natural. That may be true in a world where water always runs up hill. It can never be true in this world. It is not in accordance with your experience. Not a man here has any experience in accordance with that testimony or that doctrine; not one. You never will have unless you become insane. If this trial lasts much longer you may have that experience. It is a wonder to me it has not happened already.

There is another queer circumstance connected with this case. While Dorsey told it all to Moore he kept it a profound secret from Boone. Boone, you know, was in at the first. Boone got up all this information. Boone was interested in these bids, and yet he never told Boone. He had known Boone, you see, for several weeks. He told Moore the first day, the first minute. He wished to relieve his stuffed bosom of that secret. Moore was the first empty thing he found, and he poured it into him. It is astonishing to me that he succeeded in keeping that secret from Boone, but he did. He even kept it from Rerdell.

Rerdell never heard of it—a gentleman who picks up every scrap, who listens at the key-hole of an opportunity for the fragment of a sound. He never heard it. John W. Dorsey did not even know anything about it. Nobody but Moore. Now, I ask you, gentlemen, is there any sense in that story? I ask you. I ask you, also, if the testimony of Stephen W. Dorsey with regard to that transaction is not absolutely consistent with itself? Did he not in every one of those transactions act like a reasonable, sensible, good man? Oh, but they say it is not natural for a man to help his brother; certainly it is not natural for a man to help his brother-in-law, and nobody but a hardened scoundrel would help a friend, and Dorsey is not that kind of a man. Occasionally in a case an accident will happen, and from an unexpected quarter a side-light will be thrown upon the character of a man, sometimes for good, and sometimes for evil. Sometimes a little circumstance will come out that will cover a man with infamy, something that nobody expected to prove, and that leaps out of the dark. Then, again, sometimes by a similar accident a man will be covered with glory. In this case there was a little fact that came to the surface about Stephen W. Dorsey that made me proud that I was defending him. Oh, he is not the man to help his brother; he is not the man to help his brother-in-law; he is not the man to help a friend; and yet, when Torrey was upon the stand, he was asked if he was working for Dorsey, and he said no, and was asked if Dorsey paid him at a certain time, or if he owed him, and he said no. He was asked why, and he replied, "Because only a little while before, when I was not working for him, and my boy was dead, he gave me a thousand dollars to put him beneath the sod." That is the kind of a man Stephen W. Dorsey is. I like such people. A man capable of doing that is capable of helping his brother, of

helping his brother-in-law, and of helping his friend. A man capable of doing that is capable of any great and splendid action. Is there any other man connected with this trial that ever did a more generous, nay, a more loving and lovely thing? How such a man can excite the hatred of the prosecution is more than I can understand.

Now, we have got to the division, and the question arises, was there a division? Let us see. On page 5009 Mr. Bliss admits that Vaile, immediately upon Dorsey's coming out of the Senate, came here for the purpose of settling up this business; that he made up his mind to have no more to do with Dorsey. Then Mr. Bliss makes this important admission, and I do not want any attorney for the Government to deny it.

He admits that in May there was a final division, and that that division was to take effect as from the 1st day of April, and that after that each party took the routes allotted to him, and they became the uncontrolled property of that person, no other person having the right to interfere. There is your admission, just as broad as it can be made. Mr. Bliss, after having made that admission, which virtually gives up the Government's case, then threw a sheet-anchor to the windward and said, "But when they divided they made a bargain with each other that they would make the necessary papers." What for? To carry out the division. That is all. Now, the only corner-stone for this conspiracy, the only pebble left in the entire foundation is the agreement to make the necessary papers after the division. That is all that is left. The rest has been dissolved or dug up and carted away by this admission. Let us see what that agreement was. Mr. Bliss turned to the evidence of John W. Dorsey, on page 4105:

Q. At the time you sold out, was there any understanding about your making papers?—A. That was a part of the agreement. I was to sign all the necessary papers to carry on the business.

When he sold out he agreed to sign all the necessary papers. It is like this: Mr. Bliss says on such a day, for instance, they divided. Suppose, instead of being routes it was all land. They divided the land and then they agreed to make the deeds. That was the conspiracy; not in the land; not in the agreement about the land; not in the bargain, but in the execution of the papers in consequence of the bargain. That was the conspiracy. They agreed to make all the necessary papers. That was the agreement. Then the Court asked John W. Dorsey a question.

Q. You agreed to sign what?—A. All the necessary papers to carry on the business.

That is what he agreed to do. What else? What were those papers? First, they were to sign all the subcontracts that were necessary, all the Post-Office drafts necessary, and they were to sign letters like this:

The Post-Office Department, in regard to this route, will hereafter send all communications to the undersigned.

In other words, the object was to let the person who fell heir to a given route in the division control that route. That was all. The man who was the contractor agreed that he would sign all the necessary papers. For what purpose? To allow each man who got a route to be the owner of it and control it and draw the money. That is all. And yet it is considered rascality.

Let me call your attention to another piece of evidence on this subject. On page 5016, Mr. Bliss is talking about all these papers and these letters that were written and apparently signed by Peck, but really signed by Miner, saying, "I want you to send all communications in reference to such a route to post-office box No. so and so, John M. Peck," sometimes with an M. under it and sometimes without. He did that in consideration of the agreement at

the time he got the routes that had been originally allotted to Peck. Mr. Bliss brought here a vast number of these papers, and then he continued, on page 5017:

All those, gentlemen, are orders, dated after the division, many of them coming away down into 1881, and all of them relating to routes with which Peck had no connection, because he severed his connection with all the routes prior to the 1st of April, or as of the 1st of April, 1879. John W. Dorsey tells you that he signed papers right along—

Of course he did. He agreed to—

and I have here a series of them. Many of them are orders not in blank. There are among the papers, orders signed in blank, but these are dated, and they are witnessed not always by the same person as indicating that they got together and signed a lot of orders at the time of the division. There is every indication that the dates are correct. The witnesses are different at different times.

The COURT. These same orders would have been made if the division had been perfectly honest.

That is what I say. That is what we all say, gentlemen. If the transaction then had been perfectly honest the papers would have been precisely as they are. From the papers being precisely as they are, do they tend to show that the transaction was dishonest, when it is admitted by everybody and decided by the Court, that if the transaction had been perfectly honest the papers would have been just as they are? Recollect my text. Every fact when you are proving a circumstantial case has to point to the guilt of the defendants, and their guilt has to be found from all the facts in the case beyond a reasonable doubt. If there is one fact inconsistent with their guilt, the case is gone.

There is another little admission to which I call your attention. Nothing delights me so much as to have the prosecution in a moment of forgetfulness, or we will say on purpose, admit a fact. Mr. Bliss said, on page 5018:

You will bear in mind that the division took place some eight months previous to that.

That was January 1, 1880.

However that may be, these papers are all papers which on their faces might be innocent and fair and proper. They are papers which, under ordinary circumstances, might be executed to enable others than the contractor to draw the pay and to be filed with the department, though it appears, I think, by the evidence in this case that no draft could be filed except shortly prior to the quarter as to which it applied. As to these papers all that we have to say is this : they are papers on their face apparently innocent, papers calculated to go through in the ordinary practice as though there was nothing wrong about them. At the same time the evidence shows that they were papers executed by these several parties at the time of or in pursuance of the agreement of the division.

I do not want anything better. That settles the papers. They were made at the time they agreed to make them. It was the only way in which they could give the party who got the route absolute control of the route.

Now, gentlemen, apart from these papers, I believe they have three witnesses, at least they are called witnesses, in this case. The first witness that I will call your attention to, and who figures about as early as anybody, is A. W. Moore. I want to ask you a few questions about his testimony. I want you to understand exactly what he swears to and the circumstances. Let us see.

He swears first that he had a conversation with Miner, in which he told Miner that he would work for him for one hundred and fifty dollars a month and expenses, with permission to put on some of his own service, I think, in Oregon and California, and that Mr. Miner accepted his terms, and employed him as the agent of Miner, Peck & Co. Recollect that, Miner, Peck & Co. Second, that Miner told him to report at Dorsey's house to get instructions. Miner at that time was staying at Dorsey's house. I do not know whether it was to get instructions from Dorsey or from the house, or from Miner. I take it, from Miner. No matter. Mr. Moore then swears that he reported to Dorsey and Dorsey asked him his opinion about the service. Moore had never been there and did not know one of the routes, but Dorsey was anxious for

his opinion. How did he know any more about the service than Dorsey? There is no evidence that Moore knew the price. There is no evidence that he knew the amount the Government was to pay on a single route. He was a stranger. Then he had another conversation with Dorsey in which Dorsey told him that they had bid on the long routes with slow time, because that was the way to make money. Not satisfied with that, Mr. Dorsey showed him the subcontracts with the blanks and with the changes, and then he explained to him the descending scale, and he explained to him the percentage of expedition. He said Dorsey told him forty per cent. of the expedition. Boone swears it was sixty-five per cent. There is a little difference; not much. Moore swears that he himself was to have twenty-five per cent. of the stealings. Let us see how that is. Boone swears that the subcontractor was to have sixty-five per cent. Rerdell swears that Brady was to have thirty-three and one-third per cent. That leaves one and two-third per cent. for the contractor. Do you see? The subcontractor got sixty-five dollars out of one hundred dollars, and then Brady got thirty-three dollars and thirty-three and one-third cents. That makes ninety-eight dollars and thirty-three and one-third cents, leaving the contractor one dollar and sixty-six and two-third cents. That was all he got. Did you ever know of anybody on earth doing business at a smaller per cent. and paying for the trouble? Now, Mr. Moore comes in with his statement. He says the subcontractor got forty per cent. and then he himself got twenty-five per cent. That makes sixty-five. Then, according to Rerdell, Brady was to have thirty-three and one-third per cent. That makes ninety-eight and one-third. There is the most wonderful coincidence in this whole trial. Rerdell and Boone and Moore agree exactly that the contractor gave up ninety-eight and one-third per cent. to others and took one and two-thirds himself. Did you ever know as much humanity in a conspiracy as that? Did you

ever know such a streak of benevolence to strike anybody? It reminds me of a case of disinterested benevolence that happened in Southern Illinois. A young man there went to a lawyer and said to him, "I want to get a divorce, I was married at a time when I was drunk, and when I sobered up I didn't like the marriage. I want a divorce." The lawyer asked, "What do you want of a divorce?" "Well," he said, "do you know the widow Thompson?" "Yes." "She has been a widow there for about forty years. Do you know her boy? He is the biggest thief in this county. He went over the Ohio River the other day and stole a set of harness and a mule." "What has that to do with this divorce case?" "Well, he said, "I want to get a divorce and I want to marry that widow." "What for?" "I want to get control of that boy and see if I can't break him from stealing. I have got some humanity in me." Here are S. W. Dorsey, his brother, his brother-in-law, Miner and Vaile starting a charity conspiracy, and out of every hundred dollars that they steal they offer ninety-eight dollars and thirty-three cents upon the altar of disinterested friendship. You are asked to believe that. You will not do it.

Mr. Moore also swears that he received some money by a check, but he does not know whether the check was payable to him or payable to Miner, and he got a power of attorney signed by Miner from John W. Dorsey and John M. Peck, and then he started, S. W. Dorsey assuring him in the meantime that he could tell the people out there that the service would be increased and expedited in a few days. Mr. Moore is a peculiar man. He says that that suited him exactly. He was willing to steal what little he could; he was willing to steal for one hundred and fifty dollars a month if he couldn't get any more, or he was willing to steal for a part of the stealing. If he could not get that he would take an ordinary salary. I should think he was a good man from what he says. You heard him. They were

wonderfully anxious to prove by Moore that Dorsey was the head and front of this whole business. That was the object, and so he swore as to the instructions. He said he was instructed to get up petitions so that they could be torn off and the names pasted on other petitions. He swore he carried out those instructions. He swore that Major agreed to do it, and I think a man by the name of McBean was going to do it. Yet, gentlemen, there never was such a petition gotten up. Major swore here that he never heard of it; that he never dreamed of it, and never agreed to it; that it was a lie; that it was never suggested to him. Moore went out West and came back as far as Denver, and at Denver met John R. Miner, and then came here and saw Dorsey. What did he do with Dorsey? He swears that he went to Stephen W. Dorsey and settled with him, and that Dorsey settled in a very generous and magnanimous way, and did not want to look at his account, and did not want to look at the book; had no anxiety or curiosity about the items. He just said, "How much is it?" It happened to be even dollars—two hundred and fifty dollars. When a man goes out West and has hotel bills and all that sort of thing, when he comes to render his expense account it is always even dollars. Moore said two hundred and fifty dollars. Dorsey gave it to him; never looked at the book at all. Moore swears that he made that settlement with Stephen W. Dorsey on the 11th day of July, 1878. Dorsey was then in the Senate.

Look at page 1417. You see that Moore had been smart; that is what people call smart. You know it is never smart to tell a lie. Very few men have the brains to tell a good lie. It is an awfully awkward thing to deal with after you have told it. You see it will not fit anything else except another lie that you make, and you have to start a factory in a short time to make lies enough to support that poor little bantling that you left on the door-step of your hon-

esty. A man that is going to tell a lie should be ingenious and he should have an excellent memory. That man swore that he settled with Dorsey to the 11th day of July, 1878; swore it for the purpose of convincing you that Dorsey employed him; that Dorsey gave him instructions; that Dorsey was the head and front of the conspiracy. I then handed him a little paper, and asked him, "Do you know anything about that? Did you ever sign that?" And here it is:

Not July 11. That is the day he got the money of Dorsey.

*July* 24, 1878.

Received of Miner, Peck & Co., one hundred and sixty-six dollars, balance of salary and expenses in full to July 11, 1878.

A. W. MOORE.

To when? To July 24? No, sir; he settled with Dorsey to July 11, 1878. The gentlemen had forgotten that he gave that. If he had only had a little more brains he would have avoided the two hundred and fifty dollars, that even amount, and he would have said, "Dorsey did look over my books, and we had a little dispute about some items, and we just jumped at two hundred and fifty dollars." But he swears that was the actual settlement, and then we bring in his receipt in writing, dated the 24th of July, 1878, saying that he received one hundred and sixty-six dollars that day, and that it was in full of his salary and expenses, not up to that date, but up to the 11th of July, 1878. If his testimony is true, he stole that one hundred and sixty-six dollars. If his testimony is true, he settled with Dorsey in full for two hundred and fifty dollars, and then he was mean enough to go and get one hundred and sixty-six dollars more for the same time. No, gentlemen, he was all right enough about it then; he told the falsehood here.

Now, what does Dorsey swear? Dorsey swears that he

received an order from Miner to give this man two hundred and fifty dollars. Miner swears that if Dorsey paid him anything it was on his, Miner's, request. That is a perfectly natural proceeding for Mr. Miner to request Dorsey to pay this man two hundred and fifty dollars. The man came to Dorsey's house. Dorsey gave him two hundred and fifty dollars upon Miner's order. He was trusting John R. Miner for the money, and it was none of his business whether Miner owed it or not, and consequently he did not look at his book. Now, every fact is consistent with the truth of Mr. Dorsey's testimony; the fact is consistent with the truth of Miner's testimony; and the receipt of this man given to Miner on the 24th of July, 1878, demonstrates that he did not tell the truth, under oath, in this court before you.

That is the end of Mr. Moore; that is the end of him. You never need bother about him again as long as you live.

Why, they say, "Why didn't you impeach him?" He impeached himself. "Why didn't you call so-and-so?" Because we had that receipt; that is why. No need of killing a man that is dead. You need not give poison to a corpse. When a thing is buried, let it go. When a man commits suicide, you need not murder him. When he destroys his own testimony, let it alone; it will not hurt you. I am not afraid of the testimony of Mr. Moore. If these gentlemen can galvanize it into the appearance of life, I should be very happy to see them do it. Everything that he swore upon this stand that in any way touched the defendants is shown not to be true.

Why should Dorsey have told him in 1878 to get up fraudulent petitions? Even Rerdell does not swear that in 1879 Dorsey instructed him to get up fraudulent petitions, and certainly he would go to the limit of the truth. After he made his story out of a piece of true cloth there would be very few scraps left. He would certainly go clear to the

line. And yet, even he does not swear that when he went West to make contracts, to get up petitions, he was instructed by Mr. Dorsey to get up a fraudulent petition—not once. And yet Moore swears that in 1878, when Dorsey was in the Senate, he told him to get up these fraudulent petitions. It will not do.

Mr. Major swears that what he says about it is not true; Mr. McBean swears that what he says about it is not true; and then we have Moore's own receipt showing that it is not true.

On page 4757 Mr. Bliss says—

> Moore stands before you, therefore, so far as all this testimony is concerned, wholly and absolutely uncontradicted.

His testimony was that he was employed by Dorsey; his testimony was that he was settled with by Dorsey, and the testimony of the receipt that he signed is that he settled with Miner and not with Dorsey; the testimony of Miner is that he was settled with by Miner, and not with by Dorsey; the testimony of Dorsey is that he never had any conversation with him in the world except at the time he paid him the two hundred and fifty dollars. They say Rerdell was present at the conversation. Why did they not prove it by Rerdell after Dorsey had sworn to the contrary? And yet Mr. Bliss tells you that he is not contradicted—"utterly uncontradicted."

Mr. Ker, it seems, has an opinion of this same witness, I believe. He says, on page 4511:

> He says he started out and went to work, as these records show, and made the subcontracts according to his instructions, and got up the petitions according to his instructions.

He swears he did not get up a petition at all, not one; he swears that he had not time. And yet these gentlemen say that he got up petitions according to his instructions, and he swears he did not. He swears he told Major to, and that Major signified his willingness to do it. Major

swears that that is a falsehood. He swears the same with reference to McBean, and McBean swears that it is a falsehood. Now Mr. Ker goes on:

He fixed them up and changed the language a little in some, and in some he did not take the trouble to change, but he fixed them all so that there was a space between the writing and the names, so that they could be cut off and pasted on other papers.

He expressly denies that he ever fixed a petition in the world.

Mr. KER. What page?

Mr. INGERSOLL. You ask the page! Talk to the jury seven days! I say that this man never fixed up a petition, and he never says that he fixed up a petition. Where is the page on which he says it? He was willing to do it, but he had not the time. I will show you that language. There is what they say about this man. Then he says he got a note from Miner, and went to Denver and met Miner. That is right. Then Miner offered him a quarter interest in the routes in this vast conspiracy.

Let us find what Moore thinks of himself. We find that on page 1398. He is a good man, worthy of this case, according to the eternal fitness of things. I come to this quicker than I thought I would. It is page 1396:

Q. Did you get up any?—A. No, sir; I didn't have the time.

There it is. Now, of course, Mr. Ker forgot. I call your attention to this to show how little weight such evidence is entitled to in reference to a conversation five years ago, when Mr. Ker could not remember this with the book before him.

Mr. KER. I asked you for the page on which Mr. McBean's testimony appears.

Mr. INGERSOLL. Mr. Moore is the witness. Mr. Moore swears that he never got up such a petition. Mr. Ker says he did. He and Mr. Ker will have to settle their own difficulty.

On last Friday, in reply, I think, to a question of Mr. Ker, I stated that I thought McBean swore that Mr. Moore did not make any arrangement with him to get up false petitions. In that I was mistaken. Mr. Moore swore that he made an arrangement with McBean to get up petitions. He did not quite swear that McBean agreed to get up false and fraudulent petitions. He just came to the edge of it and did not quite swear to it. Afterwards McBean was recalled by the Government and the Government did not ask McBean whether he had ever agreed to get up any petitions or whether he had ever made any such arrangement with Moore. They did not ask him and we did not ask him. I do not know why they did not ask him. They probably know.

I also stated that Moore swore that he got his instructions about these petitions from Dorsey. The evidence is that he got his instructions not from Dorsey but from Miner; that Miner so instructed him, and that thereupon he made the bargain to get up such petitions with a man by the name of Major on the Redding and Alturas route. I make this correction because I do not want you or any one else to think that I wish any misstatement made in our favor. We do not need it and consequently there is no need of making it. You will remember that after Moore swore that he made a bargain with Major to get up false petitions, Major swore that it was untrue. You will also remember that Judge Carpenter called for the petitions that were gotten up upon the routes that Moore had something to do with, and I think he showed you on one route eleven or twelve petitions. Mr. Major swears that every petition was honest, that the statements in each petition were true, and that the signatures were genuine. All those petitions were shown to you. So that the result of the Moore testimony is this: Moore swears that Miner told him to get up such petitions. He then swears that he made that

bargain with Major. Major says it is not true. Moore almost swears that he made the same bargain with McBean. McBean says nothing on the subject. Then we bring here the petitions upon those very routes, and especially upon the Redding and Alturas route, and we find no such petitions as are described by Moore. That is enough in regard to Mr. Moore upon that one point.

There is one little piece of testimony to which I failed to call your attention on Friday, and to which I will call your attention now. Moore was the friend of Boone. Boone recommended him to Miner. It was through Boone that Moore was employed. Now, I ask you if it is not wonderful that Moore never told Boone that there was a conspiracy on foot? Is it not wonderful that Moore did not tell Boone, his friend, the man to whom he was indebted for the employment, "There is a conspiracy in this case. Senator Dorsey as good as told me so. I know all about it."

The fact is he never said one word, and the reason we know it, is that Boone swears that when he went out on the 7th or 8th of August he never even suspected it. I cannot, it seems to me, make this point too plain. Boone had been known by Dorsey for a long time. They were very good friends. Dorsey had enough confidence in him to select him as the man to get the necessary information after he had been requested so to do in the letter. Boone was the man who attended to this business more than anybody else. Boone was interested with John W. Dorsey. Boone had every reason to find out exactly what was happening. He was at Dorsey's house, where Miner was. He talked with Miner day after day. He helped get up the bids. He did a great deal of mechanical work. He had the subcontracts printed. Yet during all that time Dorsey never let fall a chance expression that gave Boone even the dimmest dawn of a hint

that there was a conspiracy. Nobody told Boone. Moore, his friend, never spoke of it.

Now, there is one other point with regard to Mr. Moore. Mr. Moore swears, on page 1371, that Miner offered him a fourth interest in these routes. That was the conversation in which he said Mr. Miner told him they were good affidavit men. According to Moore's testimony he then knew there was a conspiracy, and he understood that he was part and parcel of it. Let me ask you right here, is it probable that Moore would have been offered a quarter interest at that time if a conspiracy existed, and if they had their plans laid to make hundreds of thousands of dollars, and if the profits had depended upon the affidavits alone? I ask you, as sensible, reasonable men, if he would have been offered a quarter interest under those circumstances? Now comes in what I believe to be the falsehood. Mr. Moore says that the interest was offered to him by Miner, but Miner said it would have to be ratified by Stephen W. Dorsey. That is brought in for the purpose of having some evidence against Dorsey. You must recollect, gentlemen, that this evidence was all purchased. This evidence was all bargained for in the open shamble. You must recollect that there are upon the records of this court some seven or ten indictments against A. E. Boone. You must remember that Moore was Boone's friend. You must remember that Moore was a part of the consideration that Boone was giving to the Government for immunity.

Mr. MERRICK. Is there any proof of that?

Mr. INGERSOLL. I think there is. Mr. Moore swears as to the number of indictments against Boone. He was his friend. The jury have a right to infer what motive prompts a witness. Moore wished to swear enough, so that Mr. Boone would not be troubled. In my judgment,

Mr. Boone, being under indictment, gave evidence in this case in order that the Government would take its clutch from his throat. He swore under pressure. That is the system, gentlemen, that is dangerous in any country. Whenever a Government advertises for witnesses; whenever a Government says to a guilty man, or to a man who is indicted, "All we ask of you is to help us convict somebody else;" whenever they advertise for a villain, they get him. That is the result of what they call the informer system—an infamous system. A court of justice, where justice is done between man and man, is the holiest place on earth. The informer system turns it into a den, into a cavern, into a dungeon, where crawl the slimy monsters of perjury and treachery. That is the informer system. It makes a court a den of wild beasts. What else does it do? Under its brood and hatch come spies; spies to watch witnesses, spies to watch counsel, spies to follow jurymen, so that a juror cannot leave his house without the shadow of the spy falling upon his door-step. That is not the proper attitude of a Government. The business of a Government is to protect its citizens, not to spread nets. The business of a Government is to throw its shield of power in front of the rights of every citizen. I hold in utter, infinite, and absolute contempt any Government that calls for informers and spies. Every trial should be in the free air. All the work should be done openly. These sinister motions in the dark, the crawling of these abnormal and slimy things, I abhor.

Now, to come back to Moore. Upon my word I think he was trying to help his friend. After Mr. Miner had offered him a quarter interest, then he came back to Washington. He arrived here, according to his evidence, about the 11th day of July, I think. He went immediately to see Stephen W. Dorsey. Recollect that. That was the

time Dorsey settled with him without looking at his books. After he settled with him and gave him two hundred and fifty dollars he asked him to telegraph to see if the service had been put on The Dalles and Baker City route. He waited here until he received an answer, and after that he talked with Dorsey not only about that matter, but in that conversation Dorsey said, according to Moore, that it took a good deal of money to keep up their influence in the department. When I asked him when that conversation was, he said two or three days after the first conversation. According to the evidence in this case Stephen W. Dorsey left this city on the 12th of July. This man Moore arrived on the 11th, and he says two or three days after his arrival Dorsey said it took money to keep up their influence here. When he swears that Dorsey told him that, Dorsey was in the city of Oberlin, Ohio. Recollect these things. Whoever tells stories of this character should have a most excellent memory.

Now, there is another thing. When did Miner get back? He got back by the 24th of July, because on the 24th of July he settled with Moore, and I believe then Moore went West again. Now, remember there was a contract made, as Moore swears. He has not got it. Nobody sees it. He says there was a contract made by which he had a fourth interest in something. He got back here I believe some time in November, and on the 20th of November he and Miner settled. I will now look on page 1430 for that settlement. I want you to see how everything was situated at that time.

I find on page 1430 that Mr. Miner settled for everybody with Mr. A. W. Moore. Remember the situation. Moore knew there was a conspiracy. All the service was on. You see, this was November 20, 1880. Vaile was in. They had a man who was close to Brady. Everything was running in magnificent style. Mr. Moore understood that there was

a conspiracy. What more did he understand? That he had the claw of his avarice in the flesh of a United States Senator and in the flesh of a Second Assistant Postmaster-General. Hundreds of thousands of dollars were to be made. He came back here and settled up and sold out his interest for how much? Six hundred and eighty-two dollars. Do you believe that? Credulity would not believe it. Nobody believes it, that is if the rest of the story is true. Why did he settle with him for so little? He said Mr. Miner told him he hadn't a dollar. He did not reply to him, "When this conspiracy is completed you will have plenty. I can wait." No. Miner said he hadn't anything and so Moore settled for six hundred and eighty-two dollars. Then I asked him, "You had a contract with Dorsey, did you?" "Yes; verbally." "Did you ever say anything to Dorsey about it?" "No." "Did you ever claim anything from Dorsey?" "No." "Did you ever write to him?" "No." "Did you ever say anything to anybody that you had any claim against Dorsey?" "No." You saw Mr. Moore, gentlemen, here upon the stand. Do you think he is the kind of man who would let such a chance slip? It is for you to judge. In my judgment that is the eternal end of Moore's testimony. We can call him buried. We can put the sod over his grave. We can raise a stone to the memory of A. W. Moore. Let him rest in peace, or to use the initials only, let him R. I. P. That is the end of him. If the Government wishes to dig up the corpse hereafter let them dig.

Mr. KER. I would like—

Mr. INGERSOLL. [Interposing.] I don't want to hear from you.

The COURT. You do not know what he is going to say.

Mr. INGERSOLL. He may be intending to make a motion that the jury be instructed to find a verdict of not guilty.

Mr. KER. As Mr. Merrick will have to answer, he simply wants to know the page.

Mr. INGERSOLL. If Mr. Merrick wants to know the page he shall have the page, or anybody that wishes to answer. If counsel had simply asked me for the page, without getting up in such a solemn manner, I would have told him.

On page 1406, Mr. Moore says that he went to Dorsey and got the money, and that then Dorsey requested him to telegraph to The Dalles, and that he did not see Dorsey after he got the answer to his dispatch, I think, for two or three days. He reached Washington, he says, about the 11th. On page 1372, he speaks of telegraphing to The Dalles by instructions from Dorsey.

Now, gentlemen, I am going to call your attention for a little while to another witness, Mr. Rerdell. And in the commencement, I need not refresh your minds with regard to the part he has played. I need not, in the first instance, tell you about his affidavit of June, 1881, nor his affidavit of July 13, 1882, nor his pencil memorandum, nor his Chico letter, nor his offer to pack the jury on behalf of the Government, nor the signals he had agreed upon, nor the reports he made from day to day, nor the affidavit of September that he made for the Government, nor of November nor of February. All these things you remember and remember perfectly. I will speak of them as I reach them, but I want you to keep in your minds who he is.

I need not call any names. Epithets would glance from his reputation like bird-shot from the turret of a monitor. The worst thing I can say about him is to call him Mr. Rerdell. All epithets become meaningless in comparison. The worst thing I can say after that would have the taint of flattery in it. You will remember when Enobarbus was speaking to Agrippa about Cæsar, he says "Would you praise Cæsar, say Cæsar. Go no further." And I can say,

"If you wish to abuse this witness, say Mr. Rerdell. Go no further." That is as far as I shall go.

You will remember that Mr. Rerdell was in the employ of Stephen W. Dorsey, and had been for several years. He does not pretend that he was ever badly used; he does not say before you that Mr. Dorsey ever did to him an unkind act, ever said an unkind word. In all the record of the years that he was with him he finds no page blotted with an unjust act, not one. He has no complaint to make. Under those circumstances he voluntarily goes to see a man by the name of Clayton, I think an ex-Senator from Arkansas, known to him at that time to be an enemy of Stephen W. Dorsey, an enemy of his employer, an enemy of his friend—his friend, whose bread this witness had eaten for years, whose roof had protected him, who had trusted and treated him like a human being. Yet he goes to this man Clayton, and he says, in substance, "I want to sell out my friend to the Government." He was not actuated exactly by patriotism, although he says he was. The promptings of virtue may have started him, but after he got started he said to himself, "I do not see that it hurts virtue to be rewarded." So he said, "I want some pay for this; I want a steamboat route reinstated; I want the Jennings claim allowed. Of course I am disinterested in what I am doing, but I might as well have something, if it is going." "What else do you want?" The disinterested patriot suggested that he would like to have a clerkship for his father-in-law. "Anything else?" If you will read his letter of July 5, 1882, which I will read to you before I get through, you will see that he says, "If I had remained with the Government I have every reason to believe I would have had a good position by this time." So he must have demanded a clerkship for himself—good, honest man. At that time he did not know, but swore it afterwards and swore it here upon the stand, that Dorsey had never done anything

wrong; and yet he was willing to sell him to the Government, believing that he had never done anything wrong. So he went and saw the Postmaster-General. The Postmaster-General did not appear to take any great interest in the matter. He turned him over to the Attorney-General. He showed the Postmaster-General what he had, and read him, I believe, or showed him some memoranda. Then he went and saw the Attorney-General. The Postmaster-General did not seem to give him encouragement. Then when he went to see MacVeagh he took with him a letter-book—I do not know but more than one—but we will say a letter-book. Now, what was in that letter-book? And, gentlemen, the only way to find whether a man tells the truth is to take all the circumstances into consideration. What did he want to do? What was his object? And what were the means at his command? For instance, it is said that a man left his house with the intention of murdering another, and that he had on his table a loaded revolver, and also had on his table a small walking-stick, and he took with him the walking-stick. You would say he did not intend to commit the murder; that if he had so intended he would have taken the deadly weapon. In other words, you must believe that men, acting for the accomplishment of a certain object, use the natural means within their power.

Now, what did he have in that letter-book? He swears now that in that letter-book there was a copy of a letter from Stephen W. Dorsey to James W. Bosler; that the original letter was written by Stephen W. Dorsey. That press-copy, of course, would show that the original letter was in the handwriting of S. W. Dorsey. What does he swear was in that letter? He swears that Dorsey made a proposition to Bosler to go into the business; told him the profits, and told him that he had to give thirty-three and one-third per cent. to T. J. B.; that he had already paid

him, I think, twenty thousand dollars, and had more to pay him. According to the testimony of Mr. Rerdell, that was in the letter-book that he took to Mr. MacVeagh. Now, recollect that. Why did he not show it? He had forgotten it. He showed him what he had. Recollect now, that he had a tabular statement. I think the letter showed so much money to T. J. B., and the tabular statement thirty-three and one-third per cent. to T. J. B. He had that tabular statement, and that was in Dorsey's handwriting. He says he had it. Well, after that, the Attorney-General must have told him, "That is not enough; I want some more." "Well," he says, "I can let you have some more." "What more can you let us have?" Well, then he told him about the red books; I do not know that he said they were red, but he told him about the books and that those books were in New York, and he would go over there and get them; that he was going to steal them; he says he went over to get them, and afterwards admitted, I believe that he was stealing them.

Now, we must remember the position Rerdell was in. He had been to Clayton, to the Postmaster-General in company with Mr. Woodward, and to the Attorney-General in company with Mr. Woodward, and yet there was not enough. Well, it was all he had. What more could he do? He suddenly found himself caught in his own trap. He had funished enough to trouble him, but not enough to convict Dorsey, and not enough to be promised immunity. Now, what had he to do? He did exactly as he did with Mr. Woodward in September, when he made that affidavit, and when Woodward said it was not enough; he said, "Very well, I will make another," the same as he did when he made the affidavit of seventy pages in November and found it was a little weak. He made another, and he would have made them right along. He had a factory running night and day. Now, he tells you that while he was talk-

ing with MacVeagh, just towards the last of the conversation, the idea flashed into his brain that he might save Dorsey too. Don't you remember that testimony? And as quick as he thought of that, he agreed to go to New York and steal the books. The very last thing that MacVeagh said to him, according to MacVeagh's testimony, and I believe according to his own, was to be sure and get the books; that they were all important. So he went, as he claims. Now, did it occur to him that he would save Dorsey in that way? Did he think of saving Dorsey by going and getting these books? That was the last thing, and he was going to get the books to be used as evidence against Dorsey.

In a few days he says he started for New York, and the question arises, why did Rerdell go to New York at all? Why did he want to see that the books were in New York? Why did he pretend that he had any more evidence unless he had it? You see you have got to get at the philosophy of this man; you have got to find what actuated him; and although in many respects he is abnormal, unnatural, monstrous, and morally deformed, still it may be that we can find the philosophy upon which he acted. Why did he say he was going to New York? Because the Attorney-General told him—he must have told him—that the evidence he then had was not sufficient. Rerdell could not break down right there and say, "That is all I have got." That would give up the fight; that would tell him that he had endeavored to sell out his friend and nobody would buy the evidence; that would tell him that he had tried this and had failed; that he had simply succeeded in showing his own treachery without involving his friend. He could not stop there. You must recollect the evidence he had, and the evidence he wanted.

Let us see what he had. Mr. Bliss says, "Why did he say the books were in New York? Why did he not say they were in Washington?" That would not have given

him time, gentlemen. He would have been told, "Go and get them." Then he could not have produced them. Consequently he put them in the possession of somebody else, so that if he failed to get them, then he could say that the other man destroyed them or had hid them; he could have said, "I have done my best; they did exist, but they have been destroyed, or they have been hidden, or they have been put out of the way." He wanted time, and knowing that no such books existed, he could not say, "I have them in Washington," because then he could give no excuse for their non-production. He must state it in such a way that he could reasonably fail; that is to say, that he could give a reason for his failure. He could not say, "I have them in my house," because he would have been told to go and get them. So he put them in the possession of another man, so that, failing to get them, as fail he must, he could give a reasonable excuse for the failure.

Why did he go to New York? I will tell you what my philosophy is: He found that the Government did not wish to purchase the evidence that he had. He found that, in the judgment of the expert of the Department of Justice, it was not sufficient. The next thing was to retrace his steps. He did not want to jump off of one boat into the sea and find no other boat to rescue him. He said: "I have been too hasty; I will go to New York." Why? To find out whether Dorsey had heard of this or not. That is what he went there for. The inferior man always imagines that the superior knows what he is doing, and knows what he has done. He found that he was about to fail with the Government, and then the important question to him was: Has Dorsey found this out? Can I go back to Dorsey? Or must I go on and be cast away by him and be refused by the Government?

Now let me call another thing to your minds. I will come to it again, but it forces itself upon me at this place, and it seems to me it ought to be absolutely conclusive

He swears that on the day after he went to MacVeagh with that letter-book, in looking it over he found the press-copy of the original letter that Dorsey wrote to Bosler on the 13th of July, 1879. He says that the next day he found that copy in that copy-book. Why did he not steal the book? Conscientious scruples, gentlemen! You see he was going to New York to steal another. Why not steal one that he already had possession of? And how much better that book would have been than the other that he was going to get. This was a copy of a letter in Dorsey's handwriting, in which he admitted that he had paid twenty thousand dollars to T. J. B., and was going to pay him some more, while that book in New York was not in Dorsey's handwriting—admitting, for the sake of the argument, that there was a book—but was in the handwriting of Donnelly or Rerdell. See? And right there he had the evidence, absolutely conclusive, in the handwriting of S. W. Dorsey himself, and he did not even keep it, he did not even steal it, but he gave it back and went to New York to steal a book that Dorsey did not write. He threw away primary evidence to get secondary evidence. He threw away that which would have convicted Dorsey beyond a doubt, which would have made him a welcome recruit to the Government. He threw that away and went to New York to get another, a line of which Dorsey never wrote; and then he would have to establish, after he got that book, that "William Smith" stood for Thomas J. Brady; he would have to prove after they got that book that "John Smith" or "Samuel Jones" stood for Turner. Now, gentlemen, do you believe that that man, with his ideas of honor, with the kind of a conscience he has in his bosom, with the copy of a letter in Dorsey's handwriting in his possession admitting that Dorsey gave twenty thousand dollars to T. J. B., would give that up and then go to the city of New York to steal a book not in Dorsey's handwriting,

and that did not prove that Dorsey had ever paid a cent to Thomas J. Brady, in which there was one charge to "William Smith," and that would have to be eked out by the testimony of Rerdell himself, when he had right there in his own grasp and clutch the press-copy of the original letter written by Dorsey himself? Do you believe it? There is not a man on that jury believes it; there is not a lawyer prosecuting this case who believes it.

What else did he have? He had a letter that he himself, as he claims, wrote to Bosler on the 22d of May, 1880, after he, Rerdell, had been summoned to appear before a committee of Congress. He had, he says, those three sheets.

What else did he have the morning after he was talking with MacVeagh? He had the tabular statement in the handwriting of Stephen W. Dorsey, and over the Brady column, "T. J. B., thirty-three and one-third per cent."

What more did that man have? He had the balance-sheets made out, as he swears, by Donnelly, of those books. Were the balance-sheets just as good as the books?

Now, just think what he had, according to his own testimony: A copy of the original letter, written by Dorsey to Bosler, in which he admitted his guilt; a copy of the tabular statement, written by Dorsey, in which he put down thirty-three and one-third per cent. to T. J. B. What more? Copy of the letter that he had written to Bosler on the 22d of May, 1880. He had all that, and he must have had this memorandum, though I will show you that he had not, and I think I will show you when he made it. And yet he was going to New York to get some more evidence. He was going to steal another book in New York that would simply create a suspicion, while he gave up a book that was absolute certainty. That is the theory. But they say, "Oh, he did not do that quite." What did he do? He went and had that copied. He swears that he

had copied that letter of May 13, 1879, that Dorsey wrote to Bosler, in which he admitted that he gave twenty thousand dollars to Brady. Now, a copy would not show in whose handwriting the press-copy was, would it? That is a very important point. Who copied it? I think he said Miss Nettie L. White copied it. We never hear of Miss Nettie L. White again, though. These gentlemen admit that you are not to believe Mr. Rerdell on any point that is not corroborated, and when he swears that Miss Nettie L. White copied the letter you are not bound to believe there was such a letter unless they bring Miss White or account for her absence. They did not bring her. That is an extremely important point in their case, infinitely more important than whether the red books ever existed. Did Dorsey write a letter to Bosler in which he admitted his guilt? This man says that he had complete and perfect evidence of it in his own hand; that he gave that up; that he had that copied by Miss White. And they did not bring Miss White. Certainly he had no scruples about tearing it out. He says he tore out his letter to Bosler of the 22d of May, 1880. He had no scruples about that. He did not refuse to keep the book because it touched his honor, because in a day or two he was going to steal another not half as good as that one, not one-tenth part as good. Just think. He gave up evidence that was absolute and complete, and went to steal evidence that was secondary and of the poorest character. You do not believe it. He would have kept that book if he had kept any. If he was going to steal any evidence, and had the best, he would have kept it. The trouble was that there was no such letter in that book. There was his letter of May 22, 1880; no doubt about that; and that man tore it out, and then he made up one in his own mind, and had it of that date; that is all.

So he went to New York, and he swears that he went

right up to the Albemarle Hotel; that it was early in the morning; that Dorsey was not then up; and that he had a conversation with Dorsey, in which Dorsey charged him with having had something to do with the Government, with having gone over to the Government. Dorsey had heard that there was something going on about that time, and I suppose he asked Mr. Rerdell about it. Rerdell denied it; said there was no truth in it; that nothing of the kind, character, or sort had ever happened.

Now let us just see whether I can demonstrate to you that Rerdell, in the conversation he had with Dorsey at the Albemarle Hotel, denied that he had gone over to the Government, or that he had done anything that was not perfectly honest, straightforward, and upright. I refer to it now, although I may come to it again.

And, gentlemen, I am sorry for you; I pity every one of you, that you have to hear all that has to be said in this case. But you must put yourselves, for the moment, in our places. You must remember that these defendants have borne this agony, have been roofed and surrounded with disorder for two years. You must remember that the agents of the Government have pursued them, they have watched over them and spied them night and day. You must remember that they have been slandered for years in the public press, although the tone of the public press is now changing, and changing in such a marked degree that one of the attorneys here for the prosecution claimed that we had bought up the correspondents. When you take into consideration what my clients have suffered, the position they are now in, fighting this great and powerful Government, I know you will excuse us for inflicting upon you every thought and every argument that we think may be for our defence.

I am doing for my clients what I would do for you, or any of you, if you were defendants, and I am doing for

them what I would want them to do for me were I a defendant and they my counsel.

Now I am going to demonstrate this. When Mr. Rerdell got to Jersey City he telegraphed back, according to the evidence of Mr. Dorsey:

Up to this moment I have been faithful to every trust.

I believe Rerdell swears that he did not send that. He had a memorandum-book which he took out of his pocket. I think a leaf was torn from it, and he ran his pencil through this line on the page on which he had taken a copy of this dispatch, "Up to this moment I have been faithful to every trust," and says he did not send it. Why did he put his pencil through that? Because that line would not agree with the testimony he had given upon the stand. "Up to this moment I have been faithful to every trust" was in that dispatch. I want to ask you if you believe that Rerdell could have sent that dispatch to a man to whom he had admitted that very morning that he had gone over to the Government? Do you believe it? How perfectly natural it would have been for him to send a dispatch from Jersey City that harmonized and accorded with his denial of that morning.

Just look at that [handing the paper to the foreman of the jury.] Just read it. I want the jury to look at it. He rubbed it out of his memorandum-book. When? At the time? No, sir; when he found that he wanted something to harmonize with his evidence here. Even he had not the brazen effrontery to swear that he had told Dorsey that very morning that he (Rerdell) had gone over to the Government, and then that very afternoon to telegraph him—

Up to this moment I have been faithful to every trust.

Why, in comparison with that cheek brass is a liquid.

What is the next sentence?

The affidavit story is a lie.

Why did he leave that in? Because technically that was true. He had not then made an affidavit, and there is nothing so pleases a man who has made up his mind to tell a lie as to have mixed with the mortar of that lie one hair of truth. It is delightful to smell the perfume of a fact in the hell-broth of his perjury. Just look at that. These two things show that he had not admitted to Dorsey that he had told the Government anything against Dorsey. He wanted Dorsey to understand that he, Rerdell, had not communicated with the Government. Now, if you admit his evidence to be true, at the time he sent that dispatch he had the stolen book under his arm, and you, gentlemen of the jury, are asked to believe a man who would do that thing. I would not. I would not convict the meanest, lowest wretch that ever crawled between heaven and earth upon such testimony. Never. Neither can you do it. A verdict must rest upon a fact. The fact must rest upon the testimony of a witness. That witness must be, or seem to be, an honest man. And unless a verdict is based upon the bed-rock of honesty, it is infinitely rotten, and the jury that will give a verdict not based upon honesty is corrupt.

Mr CRANE (foreman of the jury.) I notice that this dispatch seems to have been written with different pencils at different times.

Mr INGERSOLL—

Up to this moment I have been faithful to every trust—

Is written very dimly.

The affidavit story is a lie, but confidence between us is gone—

Is in still a different hand.

I resign my position and will turn everything over to any one you designate—

Is still another hand. Three hands, three pencils, in the one memorandum. These papers have been manufactured, and when the Government said, "This is not enough," another paragraph has been added.

How hard it is to perpetrate a piece of rascality and do it well. There are an infinite number of things in this universe, and everything that is in it is related to everything else; and when you get a falsehood in it that does not belong to the family, it has not the family likeness; and when anybody sees it who is acquainted with the family, he says, "That is an adopted young one."

Mr. Rerdell now says, I believe, that he did not send that line, "Up to this moment," &c. Dorsey swears that he did. Rerdell then produces this book and this paper which I have shown to you.

Now, let us follow Mr. Rerdell from the Albemarle Hotel.

I will show that he crosses himself on almost every fact that he endeavors to swear to. He swears that he went to Dorsey's; that from Dorsey's he went immediately to Torrey's office; that he then went and got lunch and then went to Jersey City. He also swears that he got his breakfast before he went to Dorsey's. In the next examination he swears that he got his breakfast after he went to Dorsey's, and after he got the book he went to Jersey City, first walking up and down Broadway for about an hour. He had forgotten about the lunch. There is nothing in it but a mass of contradiction. He swears that he went down to Torrey's office. Why did he not make it earlier, as soon as he got off the boat? Because he did not have any key to the office. It would not do to swear that he broke into the office and that nobody ever heard of it, and so he had to put the time after the office would naturally be open. Well, now we have got him as far as the office. He swears that he went in there and saw Mr. Torrey. After chatting a little with Torrey, and telling him the object of his visit, Torrey took him into the next room and took these books from a shelf or desk, or something of that kind, and handed them both to him, and he looked them over at his leisure,

while Mr. Torrey went back to his business. He finally took the journal and left the ledger. Why did he leave the ledger? I will tell you after a while. Every lie, as well as every truth, has its philosophy. He took the journal and came along out with it under his arm, not wrapped up, not concealed. Then he had another chat with Torrey about the weather or something, and then he went on. Why did he swear that he had a conversation with Torrey in that office? I will tell you. When he was giving that testimony, Torrey was in mid-ocean, between New York and Liverpool. I guess Mr. Rerdell had heard that the man was away. He thought he would be absolutely and perfectly safe, and so he said he had a conversation with Torrey. The moment he repeated that conversation with Torrey, I said, "Where is Torrey?" We telegraphed to New York and we found that Torrey had left for the old country. We sent a cablegram to Queenstown and we intercepted him. I think he staid a day in the old country, and took the next ship and came back, arriving here in time to swear that Rerdell never visited that office, that he never had that conversation with him, and that he never got that book from that office; more than that, that that book never was in that office. Who are you going to believe, Torrey or Rerdell?

Another man was there on that very day, Mr. Mullins. He never had any recollection of seeing Rerdell until he saw him here. All the books were kept in the safe except the books that Torrey had in his desk. No such books were in the safe and no such books were in Torrey's desk. Gentlemen, no such books existed, and I will demonstrate it to you before I get through. No doubt the man had some little expense-books of his own. He has widened them, he has lengthened them, he has thickened them, he has colored them. He has refreshed other people. When the Government tells a man, "You have got an office,

haven't you?" "Yes." "Well, we want you to remember this." Then he is refreshed on the subject. The words the Government speaks are rain and dew and sunlight upon the dry grass of his memory and it springs up green. He says he has been refreshed. Before I get through I will show you that these things were proved only by gentlemen who had been refreshed.

Now, why did Rerdell say he took the journal and left the ledger? I will tell you. There is more in the shirt theory than you would think. He had a shirt in a paper, folded up just once over the bosom. Unexpectedly he met Mr. James on the train. He was very much surprised to meet him, because James swears he was very much surprised to meet Rerdell. James knew that he had gone over to New York to get those books, and he asked him, "Did you get the books?" Rerdell had that beggarly little package. He could not call that "books," because it was not large enough, and so he had to say he had a book. That was the reason he said journal and not ledger. He had too small a package for "books," and consequently he told James he had the "book," and he is sticking to it; only one book. Another reason: He said to James, and it was very smart of him, "I don't want to show you what I have got in this package, because there is a fellow looking," and so the shirt, in unconscious innocence, reposed unseen. Who was the fellow who was looking? Chase Andrews. You recollect him. He came into the depot at Jersey City at the time Rerdell was writing this virtuous dispatch, this certificate of his honor and of his faithfulness. He shook hands with Rerdell. Rerdell said he had a carpet-sack, but it was not big enough to get one of these books in. He wanted the jury to think it was a pretty big book. He hated to lose a chance of adding to the size of the book, and so he swore that it was too big to put in the carpet-sack. If he had only had sense enough to put it in

the carpet-sack, and let it alone, we never could have proven anything about it by Chase Andrews. Andrews would not have sworn that he looked through the carpet-sack. But Rerdell in his anxiety to have that book a big book said he could not get it into the carpet-sack, and consequently must have held it in his hand. Chase Andrews saw him in the depot at Jersey City, and rode in the next seat in the Pullman car from Jersey City to Washington, and Rerdell had no book. Who will you believe, Chase Andrews or Mr. Rerdell?

MR. INGERSOLL. [Resuming.] May it please the Court and gentlemen of the jury.

It is also claimed by the prosecution that on the evening of the day on which Rerdell was in New York and sent the telegram from Jersey City, Dorsey wrote a letter to Rerdell in which he begged him for the sake of his family, for the sake of his children, and everything to go no further. I believe it is claimed that after Mr. Rerdell got back here to Washington he showed that letter to his brother. It struck me as extremely wonderful that he did not show his brother the book; that was such an important thing, it being the thing that he went after, being something that was to decide his fate with the Government. There was nothing about that. Let me say right here: Suppose his story is true that he told Dorsey that he had been to the Government. Would Dorsey write to that man a letter begging him for God's sake not to go further? Would he not rather have sent some man to see him? He knew at that time that he was utterly dishonest, having received that very afternoon, according to Rerdell's testimony, a telegram from Rerdell, in which Rerdell admitted that he had told a falsehood. Would he then have put himself upon paper? Would he have put himself in the power of that same man? I ask you, because you know there is about as much human nature in one person as in another, on the average, and the

only way you can tell what another man will do is by thinking "What would I do under the circumstances?"

I am going to demonstrate to you now with just one point that there were no such books. When Rerdell came to make the affidavit of June 20, 1881, Dorsey knew that Rerdell had talked with MacVeagh, James, and Clayton. He also knew that Rerdell, according to his statement, had promised to go to New York and get the red book. Rerdell swears in the affidavit of June, 1881, that he promised MacVeagh to go to New York and get those books. Dorsey knew at that time whether such books existed or not. If he knew they did exist then he knew that Rerdell went after them. Why did not Dorsey ask Rerdell at the time he made that affidavit, "Did you get a book in New York?" Admitting, for the sake of the argument, that Rerdell's story is true that the books were there and that Dorsey knew it, would not Dorsey have asked him, when he was making the affidavit of June 20, 1881, "Did you get a book in New York? What did you do with it, if you did?" Rerdell swears that Dorsey did not mention that subject; that it was not talked of between them. Why? Because both knew that no such books existed. That is the reason he did not ask him if he got it. He knew that he did not get it. Why? Because the book was not there to be obtained. Can you explain that on any other hypothesis? Dorsey knew at this time, according to the testimony of Rerdell, that Rerdell was dishonest; knew that Rerdell had tried to sell him out to the Government; knew that Rerdell had promised MacVeagh he would go to New York and get those books; knew that Rerdell had been to New York; knew that Rerdell had gotten back, and yet did not ask him, "Did you get a book?" Would he not naturally have said, "I want that book that you got in New York. I want it now." It also appears in evidence that on the very day that Rerdell was in New York and says he was in Torrey's office, Torrey

in the afternoon went to the Albemarle Hotel to do some writing for Mr. Dorsey. Is it conceivable that Torrey would not in that conversation have told Dorsey, "Your clerk, Rerdell, came to the office to-day and I gave him the mail book or one of those books"? Not a word. That affidavit was made in June, 1881, and was the affidavit in which Rerdell disclosed what he had done with the Government, and that he had agreed to get that very book, and yet Dorsey did not take interest enough in the matter to ask him if he got a book.

Mr. MERRICK. Is there any evidence of the conversation between Torrey and Dorsey?

Mr. INGERSOLL. No. The evidence is that Torrey went there that evening. You claim that that was the topic of conversation, and that Dorsey sent dispatches to Rerdell that night and wrote a letter to Rerdell. So, I say, under the circumstances, and with the excitement then prevailing, it is inconceivable that Torrey should not have said, "Your man Rerdell has been at my office to-day, and got one of the books."

I say it is inconceivable that he did not tell him, and therefore Dorsey must have known it had it been a fact, and had it been a fact when Rerdell made the affidavit of 1881, Dorsey would have said, "I want that book. I want the book you stole from my office." He did not even mention it. It was not the subject of conversation. Yet, in that same affidavit, he said that he agreed to go and get it, and in that same affidavit he said that no such book ever existed. He swore to that affidavit from friendship. You see, gentlemen, about how much friendship that man is capable of. He swore for friendship that no such book existed; he now swears that it did. What is that for? You want to consider these things. Nobody asked about that book. The matter drifted along. The summer wore away. Autumn touched the woods with gold. Nobody ever men-

tioned the book. Winter came. That book was in a little carpet-sack hanging in a woodshed. A magnificent place to secrete property. The snows descended; the winds howled around that woodshed. The carpet-sack hung there with the book in it. Nobody touched it. I think the next year, may be that summer, he wrote or telegraphed to Mrs. Cushman to get the book. It suddenly occurred to him that a woodshed was not a safe place for it. She got a book. She looked into it enough to find out it was about the mail business. She put it away; finally that book was brought from its hiding-place on the 13th of July, 1882, when Rerdell says he handed it over to Dorsey, and there is not one syllable of evidence going to show that it was ever spoken of from the time he visited New York until he brought it to Dorsey, as he claimed, at Willard's Hotel. What made him give it to him? Dorsey was mad. Dorsey threatened that he would have Rerdell arrested for perjury, because Rerdell had sworn that he, Dorsey, was innocent. That is enough to excite the wrath of an ordinary man. Dorsey was then on trial. The first trial was then going on. We were right in the midst of it. The year before that Rerdell had solemnly taken his oath that Dorsey was an innocent man, and here Dorsey was in a court insisting that he was innocent. Yet he threatened to have Rerdell then and there punished for perjury because he had sworn that he was innocent. That frightened Rerdell. I think it was calculated to frighten any man.

Why did Dorsey allow Rerdell to keep that book? There is only one possible explanation: The book never existed. That is all. Torrey would have told about it if it had been taken from his office, because I believe the evidence shows that that affidavit was shortly afterwards published. Nobody seemed to have taken any interest in that book. All interest faded away. Now, Mr. Rerdell made that affidavit on the 20th of June, 1881. I believe, on page 2468, Rerdell

swears that when he made the affidavit of June 20, 1881, he had the copies of the original journal and ledger at Dorsey's office. Afterwards he swears he had not. He swears that he then gave them to Dorsey. Afterwards he says they were sent to New York the year before. I will come to that after awhile. Now, let us see what the position of affairs was on June 20, 1881. At this time Rerdell had furnished the Government all the information he had, except the book. Then they had said to him substantially, "The evidence is insufficient. We want more." Rerdell agreed to furnish them the books, and went to New York to get the books.

Now, he had Dorsey absolutely in his power, according to his account. What did he do? He had, according to his testimony, the copy of the letter Dorsey had written to Bosler on the 13th of May, 1879, the copy having been made by Miss Nettie L. White. He had the tabular statement in Dorsey's own handwriting, showing thirty-three and one-third per cent. to T. J. B. He had the letter that he himself wrote to Bosler on the 22d of May, 1880. He had the red book. According to his statement, on that day he had Dorsey in his power. All he had to do was to take the next step and secure absolute safety for himself and crush his employer. What did he do? He then said, "I went to the Government and played the detective." He retreated. He voluntarily put himself in a position a thousand times as perilous as he had been in before. He put himself in a place where he had to swear that what he told the Government was a lie, and that he was simply endeavoring to find out the Government's case and was acting as a detective. You must recollect that Rerdell is a man who does nothing for money. He will make an affidavit for unadulterated friendship. He will make it also from fright. He will make it also, he says, in the interest of truth. At that time he made an affidavit, as he says, for friendship, and it is for the jury to determine how much a man like Rerdell—because you know what he is just as well as I do—would do for friendship. You have seen him here day after day. You

saw him sitting right at the door when Mr. Ker and Mr. Bliss were demonstrating to you that he was a guilty wretch, and you saw his face beaming with pleasure. He was absolutely delighted. Yet when Mr. Wilson stood here and endeavored to show that the man was not as bad as he said he was, endeavored to show that his plea of guilty was absolutely false, he slunk away, covered with the shame of innocence. He did not want to hear that. He wanted it understood that he was guilty, and that it was the proudest moment of his life. Now, it is for you to determine how much such a man would do for friendship. It is for you to determine how you can take advantage of his finer nature. He had Dorsey in his power, according to his story, but instead of carrying out his original design he turned against the Government. Why did he do that? Because of patriotism? No. Why? He did it for his own benefit, gentlemen. He never acted from any other motive. Why did he not stay with the Government? Because they would not give him his price for his evidence. Why would they not give him his price for his evidence? Because his evidence was not worth it. If he had had the copy of the letter from Dorsey to Bosler they would have given him his price. They would have followed him all over the United States to have given him his price. There was the absolute evidence against Dorsey. There was the evidence against the man whom Mr. MacVeagh wished to drag down. Why did they not buy it? Because the man did not have it. Why did he desert the Government? Because the Government would not give him his price. Again I ask why would not the Government give him his price? Because he had not the goods ; he had not the evidence. Then what did he do? He sneaked back and asked protection of the man he had endeavored to betray. That is what he did. He again asked Dorsey to stand by him. Dorsey did not need this man. This man needed him, and he instantly deserted the Government and went back to Dorsey. For the sake of saving Dorsey? No. For the purpose of saving himself.

He had not the evidence. Yet, according to this testimony of his, he did what I told you. What else did he have? He had the route-book. What was the route-book, gentlemen? From the evidence it appears that this man kept a route-book, and that in it he had the name of each route, the number of the route, where it started from, and where it went to, the name of the contractor, the amount per year, the name of the subcontractor, the amount per year, and then a column showing whether it had been increased, and, if so, how much, and whether it had been expedited, and, if so, how much. He had that book. He says he was subpœnaed to appear before the Congressional committee. What book would that committee want? They would want the book that showed the original contracts, the subcontracts, the description of the routes, how much the Government paid to the contractor, and how much the contractor paid to the subcontractor. That was the book they wanted, and that was the book to hide if any hiding was to be done. That was the book to have copied. That was the book in which figures should have been changed, if in any. And yet he never said one word about that route-book. He had it in his possession. Why should he not expect the committee of Congress to call for that book? He did not tell you. He did not have that book copied, and yet that was the book that had in it every particle of information that the Congressional committee wanted. Not a word on that subject.

It appears, too, in the evidence, that Mr. Rerdell had in his possession certain notes that passed between him and Mr. Steele about the red books. Why were not those notes produced in evidence? Mr. Steele was here on the subpœna of the Government. Why were not those notes produced in evidence? Not a word about that. Is it possible that those notes were about the route-book? Why were they not produced? Rerdell went before that Congressional committee. He did not take any route-book. What did he take? He said that he had these books made up to take. Did they

contain the accounts of the subcontractors? No. Donnelly swears there were not more than twelve accounts in the book. What was the use of taking that book, or those books, before the committee? Another thing: He says that he went immediately and got those books copied. Would he try to palm off the copies as originals? Would not the committee ask him the very first thing, "In whose handwriting are these books?" He could not say, "They are in mine," because then he would be caught. He would have to say, "They are in Mr. Donnelly's handwriting." The next question would be, "Where is Mr. Donnelly?" And the answer would be, "Here in town." The committee would send for him and would ask, "Mr. Donnelly, did you write in those books?" "Yes." "Did you make the entries at the time they purport to have been made?" "No, sir; I copied them from another set of books that Mr. Rerdell gave to me." He would either say that or swear to a lie. Then they would say, "Mr. Rerdell, we want the original books," and then he would be caught. You cannot imagine a more shallow device. More than that, the books would not have any information that the committee wanted, nothing about these contracts, and nothing about the amount paid the subcontractors. If the committee wanted anything they wanted to show that the Government was paying a large price and the contractors were paying to the subcontractors a small price. Rerdell says that when he was subpœnaed to bring his books he never thought of the route-book. He thought of the red books, and yet the route-book was the only book that had any information that the committee wanted. How was he to palm that off? Is it possible to think of a reason having in it less probability, less weight, less human nature than the reason he gives for having those books copied? There is another question. If Rerdell expected to palm off the copies as the originals, why did he keep the originals? For instance, I have a book here that I don't want Congress to see, and so I have it copied.

I am going to swear that that copy is the original; otherwise the device is good for nothing. Why keep the original and run the perpetual danger of discovery? Why not burn the original? Why keep the evidence of my own guilt, liable to be found at any moment by accident, by a servant, by a stranger? That is not human nature, gentlemen. Then there is another question: If he were going to have a book copied and then swear that the copy was the original, he would have copied it himself. If a man intends to swear to a lie the first thing he does is not to take somebody into the secret. Why should he have put himself in the power of Donnelly? He was the man to be the witness before the committee, and if his device worked he intended to swear before the committee that the copies were the originals; and yet, by going to Donnelly to have the work done, he manufactured a witness that would always stand ready to prove that he, Rerdell, had sworn to a falsehood. What men work in that way? When a man makes up his mind to swear to a lie does he take pains to go to one of his neighbors and say, "I am going to swear to a lie to-morrow and I want to give you the evidence of it. I am going to swear that a copy is an original. I want you to make the copy so that I can swear to it." Would not the neighbor then say, "I will be a witness against you in that case. You had better copy it yourself." Just see what he did. He took pains to have a witness so that if he swore falsely he could be contradicted and convicted. Why did he not copy the books himself? After he got the originals copied why did he not burn up the originals so that nobody could ever find them in his possession?

Let us take another step. Finally, he got before the committee. When he got before the committee what did he swear? He swore that he kept some expense-books showing how he stood with the contractors. I think that was the truth. I think that is what he did keep. He did

not tell the committee about the route-book. Not a word. That was the only book that he concealed in his testimony. He said he kept some expense-books and those were all that he kept. He did not tell about the route-book. That is the only book that he failed to mention. Consequently, it seems to me, that was the only book he did not want to show. Why? Because he thought at that time they were going to make a great outcry about what was paid to the subcontractor and to the contractor and he had no advices from anybody, except from whom? Except from Mr. Bosler. What did Bosler tell him? Bosler told him, "I see no reason why you should not exhibit your books and papers." Now, according to Rerdell's testimony, on the 13th of May the year before, Dorsey had written a letter to Bosler informing him that he had given twenty thousand dollars to T. J. B. Bosler knew, if the testimony of Rerdell is true, that that letter had been written, and Bosler had that information. He knew if the letter had been copied, too, because every letter that one receives gives evidence whether it has been copied or not. And yet, knowing of that letter, he wrote to Rerdell or telegraphed him that he saw no reason why he should not show all his books and papers. Nobody believes that. Nobody ever will believe it! The earth may revolve in its orbit for millions of years, and generations may come and go, countless as the leaves of all the forests, and there never will be found a man of average intelligence to believe that story. Just think of it. Bosler, according to the testimony of Rerdell, had gone into partnership with Dorsey knowing there was a conspiracy, knowing Dorsey was paying to Brady thirty-three and one-third per cent. of the profits, and thereupon the clerk who attended to the business writes or telegraphs to him, and says he has been subpœnaed to appear before the Congressional committee with the books and papers, and Mr. Bosler knowing of the existence of the conspiracy, and

knowing that Brady is getting thirty-three and one-third per cent. writes or telegraphs back that he sees no reason why all the books and papers should not be presented to the committee. Gentlemen, that is impossible; it never happened and it never will.

Ah, but they say these books did exist. Why? Because Mr. Donnelly copied them. Let us see whether he did or not. There is nothing like examining these questions. Mr. Rerdell says that in his interview with Brady, Brady suggested to him that he had better have them copied. This, I believe, was on the 21st of May, 1880. Now he swears that in accordance with that view or suggestion that he received from Brady he had the books copied by Donnelly. When did he have it done? He had it done after the 21st day of May, 1880. On page 2638 Donnelly swears that he copied these books in the latter part of April or the forepart of May. On page 2636, where he was asked if he had anything to do with copying a book of accounts for Rerdell, he says that he had; and on being asked what kind of books they were, says they were a small set of books. Donnelly swears that they related to the mail business, and seemed to be the books of a firm. At that time nobody was interested in the matter except S. W. Dorsey. How did they appear to be the books of a firm? Donnelly swears, on page 2640, "there were not more than a dozen accounts in the book." Let us see if these were the mail books. He says there was an account against S. W. Dorsey; that is one. An account against John W. Dorsey; that is two. Against Donnelly himself; that is three. M. C. Rerdell; that is four. Interest account; five. A mail account; six. An expense account; seven. A profit and loss account, eight; and an account with William Smith, nine. That is all he gives. But he says they were not to exceed a dozen. On page 2644 Gibbs says there was an account against Colonel Steele and Mrs. Steele. I take it they would be in

one account. That makes ten. Then there was an account against Jennings, making eleven; and an account against Perkins, making twelve. Let us see if we can go a little further. Mr. Rerdell swears to a cash account; that is thirteen. Also an account against J. H. Mitchell; that is fourteen; and one against Belford, making fifteen. You can deduct your Jones and your Smith and have one more account in the book then than Donnelly swears was in it. He swears they were not to exceed a dozen. That was the book with all this mail business. We will follow it up a little. Rerdell says he opened the books according to the memorandum, and swears consequently that there was a cash account and an account with J. H. Mitchell. J. B. Belford, I believe, he afterwards mentioned. Now, according to Gibb's testimony there was an account with Perkins. Understand I say that the only book he had, if he had any, was a private book in which he kept his own expense accounts and his own matters, and it was not a book with which Stephen W. Dorsey had any connection. I say that the William Smith and Samuel Jones account he has added for the purpose of having something to sell to the Government. That is my claim. I say they were his private books. There was an account with Perkins. You have heard all the testimony, gentlemen. You know all the contracts in this case. You know all the subcontracts. There is not a single solitary account in this book with any subcontractor mentioned in any of these subcontracts except Perkins and possibly Jennings. Who was Perkins? Perkins was a subcontractor on the route from Rawlins to White River. That is the route that Rerdell had an interest in himself.

Rerdell made the subcontract with Perkins himself, and consequently he had an account with Perkins in his own private book, and had not any account with the rest of the subcontractors. We also find, according to Gibbs, that there was an account against Jennings. Who was Jennings?

That brings us to the Jennings's claim. That is the claim that he told Mr. Woodward about, when he wanted to sell out in the first place, and that is the claim that he told MacVeagh and the Postmaster-General about. Strangely enough and wonderfully enough we find that claim in this very book. That shows whether this was a private book or whether it was a book kept for the accounts of Dorsey.

Now, by looking at the Post-Office reports I find that nine hundred and ninety-four dollars was paid to Rerdell for Jennings on the 14th day of April, 1880, and the question I ask is did he keep two sets of books at that time? He produced in court a book of his own, kept at that time with the Jennings account in it. The book that was copied had the Perkins account, and why? Because it was a special account in which Rerdell was interested. They have failed to prove that there was in that other book any account in which Dorsey was necessarily interested, except the account kept with Rerdell showing Rerdell's transactions with Dorsey.

We now come to the testimony of Mr. Gibbs. Mr. Gibbs says his wife copied a journal between Christmas, 1879, and the 1st of March, 1880. Rerdell says that she copied the journal and ledger both. The witness, Gibbs, gives the color of the book. He says it was not red; it was either brown or black. Mr. Gibbs remembers nothing about the Smith account, whether it was large or whether it was small. He finally swears that he does not really recollect anything about it, except that Rerdell brought the book there and said he wanted to get a copy made to send to Dorsey in New York, and that he returned the book and the copy to Rerdell. He swears that he remembers as names in this book Smith, Jones, and S. W. Dorsey, and M. C. Rerdell. Those were all he could think of. He does not remember the name of John H. Mitchell. On page 2646, he says he believes that Rerdell came to him and asked him during the trial if he recollected the name of William Smith, and he swears that when Rerdell asked him if he recollected the name of William Smith, he

distinctly told him that he did not. Then he asked him if he recollected the name of Jones, and he swears that he told Rerdell when he asked him that question that he did not. I read from page 2646:

I tried not to remember anything of this.

How can a man try not to remember? What mental muscle is it that he contracts when he tries not to remember? That is a metaphysical question that interested me greatly when the man was testifying, for he said he tried not to remember. Why did he try not to remember?

I didn't want to be called into court if I could possibly help it, and for quite a long time did not mention the fact that I knew anything of the books. But when I was called into court, I thought of all the circumstances connected with the time that I copied the books; and a few days ago, or a week or so ago, in going home one night, and thinking this thing over in my mind, and thinking of everything I could think of, my mind reverted to a conversation I had had at the time, laughing and looking over the books.

It was not only one book, then.

And I wrote a great many letters, and read a great many names—

They must have been in the letter-books—

and was laughing about the peculiarity of the names, and even made the remark, "There is even Smith and Jones in it."

What a wonderful circumstance! In copying the books and making an index of the three letter-books he found Smith and Jones. The difficulty would have been not to find Smith or Jones.

That is the evidence of that man. When Rerdell first went to him, he told Rerdell distinctly, "I remember no name of Smith; I remember no name of Jones." And then he waited until Rerdell went on the stand and swore that he copied those books, and that the names of Smith and Jones were in them, and then his memory was refreshed, and he came here and swore that the names of Smith and Jones were there. All of a sudden it came to him, like a flash, and he subsequently had the conversation with his wife. Gentlemen, you may be-

lieve it; I do not; not a word of it. He is mistaken. He has mistaken imagination for memory; he has mistaken what Mr. Rerdell told him now for something he thinks happened long ago. He took the letter-books, too. May be there is where he found some of his strange names.

Rerdell says, in swearing to the letter which he says was written by Dorsey to Bosler on the 13th of May, 1879, that he (S. W. Dorsey) took that book, all his own books that were not used for the mail business, and boxed them up. When? In 1879. Mr. Kellogg swears that after they were boxed up they were sent to New York. When? In 1879. And yet Rerdell swears that between Christmas and New Year's, 1879, those books were at the house of Mr. Gibbs to be indexed. It will not do. And Rerdell swears that he had the letter-book containing the letter of May 13, here in 1881, when he went to MacVeagh, and yet, according to his own testimony, that book was sent to New York in 1879. And he swears that the three letter-books—and I will call your attention to them after a while—that he had here, commenced on the 15th of May, and ended, I think, in April or May, 1882. He swears that the letter written by Dorsey to Bosler was written on the 13th of May, 1879, and then he swears that the first letter in the three letter-books was dated the 15th of May, two days afterward. So he had not the book here. I knew he did not have it, because if he had had such a book with such a letter, he never would have gone to New York to steal a book; he would have stolen that one.

Torrey took charge of the books January 27, 1880, and he kept them until the 1st of May, 1880, in the Boreel Building, and then at that time moved to 145 Broadway, and kept them there until the last of April, 1882.

Now, gentlemen, I will come to those red books again in a moment. Here is a little piece of evidence about the books. You know it was the hardest thing in the world to find out how many books this man had, how many times they were copied, who copied them, and what he did with

the copies; and he got us all mixed up—counsel for the prosecution, the Court, counsel for the defence—none of us could understand it. "How many books did you have? What did you do with them?" "Well, I took them to New York. No, I did not; I had some of them here." Finally I manufactured out of my imagination a carpet-sack for him. I said, "Didn't you take these books over to New York in a carpet-sack?" He said "Yes," he did. He jumped at that carpet-sack like a trout at a fly. Let me call your attention to some other evidence, on page 2637, near the bottom. Donnelly is testifying:

Q. Was it an exact copy of the book?—A. It was not.

Q. In what did it differ from the book you were keeping?—There were some items left out.

Q. What accounts did you leave out?—A. I left the William Smith account out.

Q. What did you do with that amount in order to balance the books?

Now, I want you to pay particular attention to this answer.

A. My recollection is that I carried it to profit and loss.

Q. On the books or on the balance sheet?—A. On both.

Now, remember, these were the books made out to fool the committee. I suppose there are some book-keepers on this jury. I suppose Mr. Greene knows something about book-keeping, and Mr. Evans, and Mr. Crane, and Mr. Gill. I do not know but you all do. And you know that when you carry an amount to profit and loss you do not throw the name away; you keep the name. If you have charged against Robert G. Ingersoll five thousand dollars, which you never expect to get, and you want to charge it to profit and loss, you make the charge and you put my name against that. You put profit and loss against Robert G. Ingersoll's debt. Everybody that ever kept a book knows that. If you carry an amount to profit and loss you rewrite the name of the person who owes the debt. So that when

he says, "My recollection is that I carried it to profit and loss," there would be a name twice in the book instead of once. If it was simply in the book once it would be, "William Smith, debtor, eighteen thousand dollars." But if you carry that to profit and loss you must credit profit and loss by this William Smith amount, and consequently get the name in the book twice instead of once. And that is what they call covering it up. They were so afraid that somebody would see an account against William Smith in one part of the book that they opened another account in the profit and loss business and put it in again. That would be twice. Now, let us go on a little:

Q. Were there any other accounts transferred in the same way?—A. I rather think there were, but I am not certain.

Q. Did you make the books balance on your copy?—A. Yes, sir.

Q. How long were you working on that copy?—A. I was working on it two evenings and all of one night.

Now, recollect, in the copy that he made, he carried the account of William Smith—and may be Jones, he does not remember—to profit and loss.

Now, let us take the next step. Let us go to page 2269. This is as good as a play. Donnelly swears that when he made the first copy he carried the William Smith account and some other to profit and loss. Rerdell swears that acting upon the hint of General Brady he got a man to do—what? To make another copy and leave out the items that had heretofore been charged to profit and loss. Donnelly swears that he balanced the books, and he is the only man that ever did balance the books, according to the testimony. After Rerdell had been subpœnaed to appear before the Congressional committee, he got another man, whom he swears he put to work on the books, designating the entries to be left out by drawing a pencil mark through them; that he told him to make up a new set of books, leaving out those entries, but to leave the books so that they would balance, taking the entries that were stricken out, and also

the same amount that had been carried to profit and loss, and leave them entirely out. Rerdell swears that prior to that time these accounts had been carried to profit and loss, and that he struck out the credits to Dorsey.

Then the evidence as it stands is this: Rerdell swears that Mrs. Gibbs copied the journal and ledger. Gibbs does not swear it, but Rerdell does. That made four books. Then he got Donnelly to make another set of books with the William Smith and Dorsey accounts carried to profit and loss.

That is six books. After he had been subpœnaed by the committee he got another man to make a new set of books and leave out the William Smith and Dorsey accounts and the profit and loss account, and that makes eight books. And there we are, so far as that is concerned.

Now, gentlemen, I have come to one other view of this case. I hope that you will not forget—because I do not want to speak of it all the time—that this man Rerdell swears that he had the original letter-press copy of that letter which he says Dorsey wrote to Bosler. Do not forget that. He says he had that before he went to New York to steal the red books; do not forget that. And that he gave that testimony away ; do not forget that. That he says he had it copied by Miss White, and they do not introduce Miss White to show that she copied it; do not forget that. Do not forget, too, that he had when he was there the tabular statement in the handwriting of S. W. Dorsey.

Mr. INGERSOLL. [Resuming.] Gentlemen, on page 2286 Mr. Rerdell gives the contents of a letter which he says Dorsey wrote to him the night he, Rerdell, left New York, and when he says he had the book with him. He swears, you remember, that afterwards Dorsey tore the letter up. Let me read you the letter as he says it was written:

The letter started out by stating that he did not believe the report that had been brought to him in reference to myself, and that he also believed the affidavit story to be a lie. He plead in the letter for the sake of his wife and children and himself, and his social and business relations, and the friendship that had long existed between us not to do anything for his injury; for God's sake to reconsider everything that I had done and take no steps further until he could see me. It was in that strain, simply begging me not to do anything further until he could see me.

Now, let us analyze that letter, keeping in our minds what Rerdell has sworn. Rerdell has sworn that when he went to the Albermarle Hotel he told Dorsey what he had done; that he had had the conversations with MacVeagh and James. Let me call your attention to the dispatch from Jersey City. First, Dorsey wrote to Rerdell that he did not believe the report that had been brought to him; *that had been brought to him.* He could not have used that word "brought" if Rerdell had been the bringer. If Rerdell had made the report to him in person he could not have written to Rerdell, "I do not believe the report that has been *brought* to me." The use of the word "brought" shows that somebody else told him; not the person to whom he wrote. "The report." What report? There is only one answer. The report that Rerdell had been in consultation with the Government. He writes to Rerdell, "I don't believe that report that has been *brought* to me," and yet when he wrote it, if Rerdell's testimony is true, he knew that Rerdell had given him that very report and he knew that Rerdell would know that he, Rerdell, had told Dorsey that very thing. Second, that he, Dorsey, believed the affidavit story to be a lie. There is again in this horizon of falsehood one little cloud of truth. Rerdell had not made an affidavit. He had told James, MacVeagh, Woodward, and Clayton what you know, but he had not made any affidavit, and when he was charged, if he was, with having made an affidavit, it delighted him to have one little

speck of truth, just one thing that he could honestly deny. That was the one thing. He had not yet made an affidavit. Third, Dorsey plead with him in the letter for the sake of his wife, his children, himself, his social and business relations, and the friendship that had long existed between them, not to do what? Not to do *anything further.* According to Rerdell, he told him in the letter he did not believe he had done *anything.* Rerdell swears that he wrote to him in the letter that he did not believe the report; that is, that he had yet done anything, and then wound up the letter by begging him, for God's sake, not to do anything *further.* How came he to use the word "further"? "Don't take any further steps. I know that you have not taken any step at all, but do not, I pray you, take any further steps." That letter will not hang together. Dorsey swears he never wrote it. Finally the letter comes down to this: "I don't believe the report. I do not believe you have done anything. But, for God's sake, do not do anything more." It is like the old Scotch verdict when a man was tried for larceny. The jury found him not guilty, but stated at the end of the verdict, "We hope the defendant will never do so again." The first part of this letter shows that Dorsey did not believe that he had done anything. The last part of it shows that he did believe he had done something and that he must not go further. No one can tell why he introduced the word "further" into this letter upon any other hypothesis. Now, I read to you, from page 2287, what Rerdell says happened at the Albermarle Hotel:

> He charged me with holding interviews with Mr. James, the Postmaster-General, and the Attorney-General, and asked me what I meant by it. I told him my action was in his behalf; that I had been keeping up with the newspapers, and knowing the facts in regard to this mail business, what I had done was done in his behalf.

That is, he did not deny that he had these conversations,

did not deny the report, did not deny that he had met the Attorney-General and the Postmaster-General, but said:

My action was in your behalf.

And then, according to Rerdell, after that Dorsey wrote him a letter, in which he said, "I do not believe the report," although Rerdell had made the report to him himself. May be that is the reason he did not believe it.

Now, let me read to you the conversation on his return from New York and see how it agrees with the letter. It is on page 2288:

Mr. Dorsey immediately brought up the conversation that we had had over in New York, and what I had done by going to Mr. MacVeagh, and asked me if I intended to ruin him. I said no, I did not; it was not my intention to ruin him; it was my intention to help him out of what I thought to be a bad difficulty.

Q. What did he say?—A. He then asked me if I had done anything further since I had left him.

Yet in the letter that he wrote him from the Albermarle Hotel he said that he did not believe the report and did not believe that he had done anything against him. The first thing he asked him when he got here was, "Have you done anything further against me?"

I said no, I had not; I had not been near Mr. MacVeagh. He then says, "Well, how shall we get out of this?" I says, "Mr. Dorsey, I will do anything that I can except to commit perjury."

A very natural remark for Mr. Rerdell to make. He would do anything but that. That testimony shows that Dorsey never wrote the letter which Rerdell says he did write from New York. That testimony shows that they did not have the conversation in New York that Rerdell says they had. That testimony shows that they did have exactly the conversation which Mr. Dorsey swears they had.

Now, I come, gentlemen, to the affidavit of June 20, 1881. I would like the letter of July 5, 1882, which is on page 3733.

You understand this affidavit was made in consequence of the conversation, as he says, that he had with Dorsey after Dorsey came back from New York, in which he said he would do anything except commit perjury, and when Dorsey told him, "Damn it, what does that amount to when a friend is involved? I would not hesitate a moment." Consequently he swears that he made up his mind for the sake of friendship to swear to a lie for Mr. Dorsey. That is what he says now. On the 5th of July, 1882, while we were in the midst of the other trial, and when Mr. Rerdell, as he says, contemplated going over to the Government, and when he would not put evidence in our hands against himself, he wrote this letter:

JULY 5, 1882.

SENATOR: What I am going to say here may surprise you, while, judging from certain circumstances that to me are easily to be seen, you may not be taken by surprise.

To commence with this, it will be necessary to go back about a year to the time when, looking forward to the inevitable result of the star-route matters—I started to put myself in accord with the Government. At that time I had no thought of being included in any prosecution or indictment, supposing that as an agent I could not be held criminally responsible. Had I for one moment thought it possible nothing could have changed my mind, even anxious as I was to benefit you. The consequence was, I listened to Bosler and did what I will ever regret. First, because of the unenviable notoriety given me in consequence of doing what he persuaded me to do.

Who persuaded him? Mr. Bosler. He writes that on the 5th of July, 1882, when, as he said, he had made up his mind to go over to the Government, and when he would not willingly put a club in our hands with which to dash out his brains.

Second, because, let this case go as it may, I am still left under a cloud—

That is a pitiable statement. That man under a cloud!—

both with your friends and acquaintances, and the public generally.

Here comes, gentlemen, the blossom and flower of this paragraph:

And that, too, almost penniless.

Then the letter goes on:

These are stern facts, and cannot be ignored, while had I continued acting with the Government my reputation would have been clear, and no doubt been appointed to a good position.

The Government must have promised the gentleman an office when he went, in June, 1881, to Woodward and to Clayton and to the Attorney-General and to the Postmaster-General. According to this letter, among other things he was to have an office, the steamboat route was to be reinstated, the Jennings' claim was to be allowed, his father-in law was to get a clerkship, and according to this letter he also was to have a position. That is civil service reform! What does he say?

At least I have every reason to believe such would have been the result.

He would have had an office, he has every reason to believe. Why? They must have promised it to him.

This now brings us to the present time. I have an opportunity to redeem myself, and think it best to do so, as by so doing I can be entirely relieved of the indictment.

The Government then must have promised him in 1882 that the indictment should be dismissed as against him. Is it possible that he would tell a lie, gentlemen? Is it possible the prosecution will say that he lied on the 13th of July, 1882, but in 1883, having met with a change of heart, he told the truth? No.

In taking this step let me say this: It is the result of much thought and also of preparation.

I think so. The preparation of several papers.

I have realized the fact that all you and Bosler desired was to use me, and when no longer needed I could go to the devil.

Well, I think that is where he has gone.

Therefore I have concluded to *be used* no longer, and propose to look out for myself.

To-day I am putting things in order, so as to commence right to-morrow. I regret this on your family's account, but I too have a family, and owe it to them to put myself right.

You see, gentlemen, he wanted to leave an unspotted reputation to his children.

I deem it as being due to you that I should give you notice of my intention. Very truly,

M. C. RERDELL.

Now, gentlemen, he comes on the stand and swears that he made this affidavit, not being overpersuaded by Bosler, but because Dorsey with tears and groans besought him to make it. Yet on the 5th of July, 1882, he says he made it because he was overpersuaded by Bosler, and he says, too, "Had I remained with the Government my reputation would have been clear, and I have every reason to believe I would have had a good position." He says, "I have another opportunity to be entirely relieved from the indictment." These gentlemen say he never was promised immunity. That simply shows you cannot believe Mr. Rerdell when he is not under oath, and what he has sworn to here shows you cannot believe him when he is under oath.

Now I come to the affidavit. I will not spend a great deal of time upon it. Mr. Rerdell, with extreme ease, without the slightest hesitation, went through that entire affidavit, picking out with all the facility imaginable, every paragraph written by Dorsey and every paragraph written by himself. I was astonished at his exhibition of memory. I finally asked to look at the copy of the paper he had, and when I got that in my hand I found that every word that he swore was written by Dorsey had been underscored with a blue pencil. That accounted for the facility with which he testified. I found afterwards that that paper had been given him by Mr. Woodward and that he had gone through and marked such portions as Mr. Dorsey wrote, according

to his testimony, or had marked those that he wrote, leaving the others unmarked, so that at a glance he could tell which way to swear. Before I get through with the papers in this case there is another thing to which I want to call your attention. All the papers as to which witnesses were called on the subject of handwriting are marked. I will show you that every one has a little secret mark upon it, so that the man who swore might know which way to swear simply by looking at the signature and at no other part. There has been a great deal of *preparation* in this case.

Now, Rerdell swears as to the parts of the affidavit that Dorsey wrote and the parts that he wrote. His object in swearing was to entirely relieve Messrs. James and MacVeagh from having made any bargain with him to steal Mr. Dorsey's books, and to entirely relieve them from any suspicion, as well as to relieve every other official of the Government from any suspicion of having promised him any pay in any shape or manner for the making of this affidavit. He swears in the first place, that Dorsey wrote this:

> My story captured them completely, and I took occasion to refer to the steamboat route and the Jennings' claim. Mr. James remarked that he knew all about the Jennings' matter, that Jennings had been badly treated, and he ought to get the money, and should; that he would investigate the steamboat route and see if anything could be done; that that was the worst part, and his special agents had reported it; nevertheless he would see if something could not be done.

On page 2506, in his cross-examination, Mr. Rerdell swears that the words—

> Mr. James remarked—

were not written by Dorsey, but were written by himself. On the same page he swears that the words—

> That Jennings had been badly treated—

were not written by Mr. Dorsey, but were written by himself.

On his examination-in-chief he swore that these words were written by Dorsey.

On his examination-in-chief he swore that Dorsey wrote this:

And to further deceive them and learn their plans, carried the letter-book containing—

And then *he* wrote —

the much-talked of Oregon correspondence.

Afterward, when cross-examined, he swears, I think upon the same page, 2506, that he himself wrote the words:

Carried the letter-book containing.

That Dorsey did not write them. He also swears in his examination-in-chief that Dorsey wrote these words:

Making only one mistake, or rather slip, by which Mr. MacVeagh could, as a good lawyer, have detected me, and that was by stating that I had kept a set of books.

On his examination-in-chief he swears that Mr. Dorsey wrote those words. On cross-examination he admits that Dorsey did not write them and that he wrote them.

On his examination-in-chief he swears that he wrote this himself:

He said, "Well, Mr. Rerdell, I am in a position where I cannot make promises, but if you will place yourself in full accord with the Government, you shall not lose by it, and I would advise you not to receive any salary from Dorsey this month. It will be all right."

On cross-examination he takes it back, and swears, on page 2503, that Dorsey wrote the words:

It will be all right.

He was afraid those words might be given too wide a significance and might in some way touch the Attorney-General, and consequently he swore that he swore wrong when he swore that he wrote them, and that as a matter of fact Dorsey wrote them. Then, on his examination-in-chief with the marked paper before him, and having plenty

of time to manufacture his testimony, he swore that he wrote the words:

He asked me—

In his own handwriting, and that Dorsey wrote these words—

when I was going to New York to get those books. I replied, "On Sunday night." He said, "Don't put it off too long, as they are all-important."

On his examination-in-chief he swore that Dorsey wrote those words, and on cross-examination he admitted that he wrote every one of those words himself. When he was cross-examined he had not the paper before him. His memory was not refreshed by the blue pencil mark. So on his examination-in-chief he swore that he wrote these words:

As I was about leaving he—

Meaning the Attorney-General—

said, "Mr. Rerdell, you have put yourself in full accord with us, and I have this to say, you shall be well taken care of and your matters shall be attended to."

On cross-examination, on page 2500, he swears that Dorsey wrote the words:

Your matters shall be attended to.

But he still admitted that he, Rerdell, wrote the words and put them in the mouth of the Attorney-General:

You shall be well taken care of.

He says in his letter of July 5, 1882:

If I had remained with the Government I have every reason to believe I would have a good position.

What next? Mr. Rerdell, in his examination-in-chief, swears that he himself wrote these words:

The next evening I called on Mr. Woodward to see if he had anything more to say, and he told me a place had been found for my father-in-law, and to give the application to Senator Clayton; to make the application for the Interior Department, as it was best not to put him into the Post-Office Department for fear of criticism; that

the appointment should be made at once. It was all arranged. The next day I saw Clayton, who said the same thing.

On cross-examination, at page 2505, he swears that Dorsey wrote a part of this; that Dorsey wrote the following words:

As it was best not to put him into the Post-Office Department for fear of criticism.

When he testified on direct examination he had this marked paper before him; in the absence of the paper, on the cross-examination, he takes his solemn oath that he did not write it, but that Senator Dorsey did. What confidence can you put in that kind of testimony? I would like to have you, gentlemen, some time, or I would like to have anybody who has the slightest interest in the thing, read this affidavit and see whether it is the work of two or the work of one. You let two men write, one writing one paragraph and the other another paragraph, and then you read it; there is no man in the world accustomed to read books that cannot instantly detect the difference in style, the different mode of expression, the different use of language. Nobody can see any difference in the writing; nobody can see the slightest difference in the mode of expression; the sharpest verbal mechanic that ever lived cannot see a joint between these paragraphs. They emanated from the same brain; they were written by the same hand; and if any man, who has ever read one book clear through, will read that, he will see that one person wrote it all. But Mr. Bliss tells you that here is a passage that shows the handiwork of S. W. Dorsey, because Dorsey was a politician:

He also said that you, Mr. President, had told Mr. Dorsey you could not interfere in this investigation and prosecution; that if you did, the public would say that the President and a Secretary, who shall be nameless, but whose name I could guess, had taken the money of the star-route ring while they were in Congress, or the Postmaster-General and Attorney-General had taken it since, and therefore he (Dorsey) must look to the courts for vindication.

That is the passage upon which Mr. Bliss relies, among others, to show that this was formed in the brain of S. W. Dorsey; and yet Rerdell swears that that passage he wrote himself. It will not do, gentlemen.

Now, in order that you may know just about how much force to give to that, let me read you a little from page 2379; and I read this for the purpose of letting you know the ideas that this man Rerdell entertains of right and wrong.

I want you to get at the moral nature of this man; I want you to thoroughly understand him. When you examine these affidavits, when you think of his testimony, I want you to know exactly the kind of nature he has, and I want you to remember that he came here upon this stand and swore in this case that he did not consider that it was wrong to interline petitions; that he did not think it was wrong to fill up affidavits; and that is the reason he made the affidavit of July 13, 1882. Although he then knew that these things had been done, still he did not regard them as wrong. You see it is worth something to get at a man, to get at his philosophy of right and wrong; it is worth something to know how he thinks; why he acts; and when you have found that out about a man, then you know whether to believe him or not.

I believe the jury did look at this paper and saw all the parts that had been marked by blue pencil, and those parts, I believe, he said Dorsey wrote. That is the paper he had before him at the time he testified in chief. But when he came to be cross-examined, not having the paper then before his eyes, he swore in very many important things exactly the other way. We were all astonished at the facility with which he remembered, he pretending to know what parts he wrote and what parts Mr. Dorsey wrote. I want you to understand this man, and before I get through with him, you will. I want you to know him.

Now we come to an exceedingly important thing in this case, in the eyes of the prosecution. It is the principal pillar supporting the testimony of Mr. Rerdell. Without that pillar absolutely nothing is left, everything falls into perjured ruin.

The first question that arises with regard to the pencil memorandum (31 X) is who wrote it, and in order to ascertain who wrote it we must take into consideration all the facts and circumstances that have been established in this case. It is already in evidence, as you remember it, that Rerdell kept a route-book. You will also remember that Mr. Dorsey had books of his own; that he had a book-keeper of his own, Mr. Kellogg; that Mr. Kellogg swears that he kept those books and that nobody else ever made a scratch of the pen in them; that he kept them up till the fall of 1879; they were then sent to New York; that Mr. Torrey took possession of those books on the 27th of January, 1880, and kept them continuously to the last of April, 1882, and that nobody else ever put a mark in them. That is the evidence. The evidence also is that there was in those books a complete mail account. The evidence is also that in those books kept by Mr. Kellogg were the charges and credits growing out of the purchase of John W. Dorsey's interest and Peck's interest in the mail routes.

Mr. MERRICK. Pardon me; point me to that evidence.

Mr. INGERSOLL. I will refer to it hereafter. I do not wonder, gentlemen, that they dislike this pencil memorandum.

Mr. MERRICK. No, sir; I only want to keep you within correct limits.

Mr. INGERSOLL. I understand that. I do not blame anybody for disliking that pencil memorandum.

Mr. MERRICK. You can convict Rerdell as much as you like.

Mr. INGERSOLL. When you come to show that he is

guilty his countenance will light up with the transfiguration of joy. There will be no more delighted auditor than Mr. Rerdell when his crimes are painted blackest. It shows you the moral nature of the man.

Now, as I say, the evidence is that there was a route-book kept; that that route book contained all the information that Mr. Dorsey or any one else would want about the routes themselves; consequently, that there was no propriety in keeping any other set of books. Mr. Rerdell could keep books for himself, but not for S. W. Dorsey. Dorsey had a set of books, and had another book-keeper. Why should he have another set opened by Rerdell? Rerdell kept a route-book that gave him all the information that he could possibly desire.

Mr. WILSON. Rerdell did not handle the money.

Mr. INGERSOLL. Of course not; there was no money at that time to handle; they had not got as far as the handle.

Now, there is another little point: Why should Dorsey voluntarily put himself in the power of Rerdell by saying, "I have paid money to Brady"? What was the necessity of it? What was the sense of it? Rerdell was his clerk. Why should he take pains to put himself, the employer, absolutely in the power of his clerk? Why should he take pains to make himself the slave of the man he was hiring by the month? Why did he wish not only to make Mr. Rerdell acquainted with his crime, but to put in the hands of Rerdell evidence written by himself? See, gentlemen, you have got to look at everything from a natural standpoint. Of what use was it to Mr. Dorsey to keep that account? Dorsey at that time had no partner. Dorsey at that time did not have to respond to anybody. Of what use was it to him to put down in a book, "I paid Brady eighteen thousand dollars"? Was he afraid Brady would forget it? Was he afraid he would forget it? Did he want his clerk to help him keep the secret, knowing that if the

secret got wings it would render him infamous? Let us have some sense. The Government introduced it. They also introduced a witness to prove that it was in Dorsey's writing. Rerdell swore that it was. Their next witness, Boone, thought part of it might be and part might not be; it did not look right to him; he rather intimated that Mr. Rerdell wrote part of it. And right there the Government dropped. No expert was brought. There were plenty of experts right over here at the Bureau of Engraving and Printing, plenty of experts in Philadelphia and New York, plenty of judges of handwriting. Right up here in Congress were twenty or thirty Senators who sat for six years in the Senate with Stephen W. Dorsey, served on the same committees with him and had seen him write every day; clerks of those committees who had copied page after page of his writing. Not one of them was called. The Government, with its almost infinite power, with everything at its command, brought no expert. That was the most important piece of paper in their case. And yet they allowed their own witness to discredit it; their own witness swore, in fact, that Rerdell had manufactured the incriminating part of it. And yet they sent for no expert to swear to this writing. Don't you believe that they talked with somebody? Has not each one of you in his mind a reason why they did not bring the ones that they talked with? They left it right there without another word. Now, why? Simply because they could get no man to swear, except Rerdell, that this is in the handwriting of S. W. Dorsey. That is the reason.

You know that Rerdell "kept this as a voucher." What for? Was any money paid out on it? No. Was it a receipt for any money? No. But he "kept it as a voucher." You see he was in a difficulty. How did he come to keep it all this time? It would hardly do for him to say that he did not try to keep it, that it had just been in the

waste-basket of forgetfulness, and had suddenly come to life by a conspiracy of chance and awkwardness. It would not do for him to say that he made it. So that he had to say that he kept it, and then he had to give a reason for keeping it. What was the reason? He said he "kept it for a voucher." I suppose you [addressing Mr. Greene, a juror] have kept books. Is that what you would call a voucher? Yet that is the reason the poor man had to give. I pitied the man when he got to the point. I am of such a nature that I cannot entirely, absolutely, and perfectly hate anybody, and when I see the worst man in trouble I do not enjoy it much; at least I am soon satisfied, and would like to see him out of it. Here he was swearing that he had this for a voucher.

Now, there are some little things about this to which I will call your attention. Here is the name of J. H. Mitchell. An account was opened with Mitchell, but he does not tell him to charge Mitchell with anything; there is nothing opposite Mitchell's name. How would he open an account with Mitchell without anything to be charged against him or to be credited? He put in the index of the book, "J. H. Mitchell, page 21." You turn over to page 21, and you find Mitchell debtor to nothing, creditor the same—silence. Not a cent opposite the name on either side. Mitchell was not an employe. Mitchell was not a fellow that they were to have an account with by the day. Then John Smith is rubbed out and Samuel Jones written under it. Rerdell says he wrote Samuel Jones. I say he did not. I want you to look at it after awhile and see whether he wrote it or not.

Now, gentlemen, it so happened that when this pencil memorandum was introduced it struck me that the M. C. R. looked a great deal like Rerdell's handwriting, and you will remember that I suggested it instantly, and said to the jury, "Look at the M. C. R." Now, gentlemen of the jury,

I want you to look at that M. C. R.; I want you to see how the first line of the M. is brought around to the middle of the letter, and then I want you to see exactly how the C. and the R. are made. Take it, Mr. Foreman, and look at it carefully. And, in connection with that pencil memorandum (31 X), I will ask the jury also to look at this settlement with John W. Dorsey, made in 1879 (87 X), and compare the initials M. C. R. where they occur on both papers. M. C. R. occurs twice, I believe, on this (87 X.) Now look at the formation of the M. C. R. on both papers, Mr. Lowery, and do a good job of looking, too.

Now, gentlemen, this is one of the most valuable pieces of paper I have ever had in this case, and it is as good luck as ever happened. I want you to look at the J. W. D. on that paper, and then compare it with the J. W. D. on this paper; you cannot spend your time better.

I did not suppose I would ever find one paper that would have everything on it. But, as if there had been a conspiracy as to this paper, there is an S. W. D. on this paper which is substantially the same as the S. W. D. on the other. The M. C. R., the S. W. D., and the J. W. D. on both these papers are all substantially the same, and I think when the jury have looked at it they will say they were written by the same hand.

Now, gentlemen, there was the testimony of Mr. Boone that he thinks the upper portion of this pencil memorandum (31 X) was written by S. W. Dorsey; that it looks like his handwriting down to and including "profit and loss," I believe; I may be mistaken; it may be down to "cash;" and then after "profit and loss" come the names of J. H. Mitchell and J. W. D., exactly the same J. W. D. that appears on 87 X.

Now, what paper is that 87 X? That is an account of John W. Dorsey against S. W. Dorsey in 1879. He had been out West to take care of some of the routes, and when

he came back he settled, and Mr. Rerdell wrote up the account. That is 87 X, and I proved that it was made in 1879. I believe the prosecution thought at first that it was 1878.

That paper shows that it was manufactured by the one who wrote this paper, and by nobody else.

Now, as I said before, there is no account against J. H. Mitchell. Opposite William Smith there are the figures eighteen thousand. And Rerdell says that he wrote Samuel Jones himself at the suggestion of Mr. Dorsey. Again I ask you, gentlemen, why would Mr. Dorsey give such a paper to Rerdell? Why would he give him this false name? Why would he put himself in his power? It is very natural that he should give the amounts ten thousand five hundred dollars, ten thousand dollars for John W. Dorsey and ten thousand dollars for Peck, because the evidence shows that those transactions actually occurred. The evidence shows, not only in one place but in many, that the ten thousand dollars was paid to John W. Dorsey, the ten thousand dollars was paid to Peck, and that the ten thousand five hundred dollars was advanced at that time by S. W. Dorsey. Consequently that is natural; it is proper. But my opinion is that he never wrote one word, one line of the pencil memorandum. It was all made, every mark upon it, by Mr. Rerdell. He is the man that made it. Did he have it when he went to MacVeagh? No. Did he have it when he went to the Postmaster-General? No. Did he have it when he went to Woodward? No. Did he have it when he made his affidavit in July, 1882? No; or he would not have made it. Did he have it when he went to Mr. Woodward in September? No; or else Mr. Woodward would have taken the stand and sworn to it. Did he have it when he made his affidavit in November? I say no. Who made it? Rerdell manufactured it for this purpose: That he might have something to dispose of to this Government;

that he might have something to swap for immunity. He "kept it as a voucher."

Why did not these gentlemen bring Senator Mitchell to show that he had some account with Senator Dorsey in May, 1879? Why did not the Government bring Mr. Mitchell? They knew that their witness had to be corroborated. They knew that the law distinctly says that such a witness cannot be believed unless he is corroborated. They also know that the law is that unless such a witness is wholly corroborated he cannot be believed; that you are not allowed to pick the raisins of truth out of the pudding of his perjury. You must believe him all or not at all. He must be received entire by the jury, or with the foot of indignation he must be kicked from the threshold of belief. They know it. Why did they not bring Senator Mitchell to show that he had some account with S. W. Dorsey in 1879? But we heard not a word from them.

What more? Rerdell says that was either in April, before he went West, or in May, after his return; and at that time, according to his testimony—that is, according to this memorandum—eighteen thousand dollars had been paid to Mr. Brady for expedition. And then following, in the month of June, before the quarter ended, eighteen thousand dollars more. That makes thirty-six thousand dollars paid to Brady. What else? Ten thousand dollars to John W. Dorsey; forty-six thousand dollars that makes. Ten thousand dollars paid to Peck; fifty-six thousand dollars that makes. He had also advanced himself ten thousand five hundred dollars; that makes sixty-six thousand five hundred dollars advanced, and not a dollar yet received from the Government. And that by a man who gave away seventy per cent. of a magnificent conspiracy because he had not the money to go on. All you have to do is to think about this. Just think of the situation of the parties at the

time. I tell you I am going to stick to this subject until you understand it.

Mr. Gibbs swears that the name of Mitchell was not in the books when he saw them, and yet those books were opened from this memorandum. Gibbs is the man who has such a control over his mind that he can "try not to remember." When I was a boy I used to hear a story of a man going around saying that nobody could control his mind for a minute; that nobody could think of one thing for a minute without thinking of something else. But there was one fellow who said, "I can; I can think of a thing a minute and not think of anything else." He was told, "If you do it, I will give you my horse, and he is the best riding-horse in the country; if you can say the first verse of 'Mary had a little lamb,' and not think of anything else, I will give you my horse, and he is the best riding-horse in the country." The fellow says, "How will you tell?" "Oh, I will take your word for it." So the fellow shut up his eyes and said:

> Mary had a little lamb,
> Its fleece was white as snow,
> And everywhere that—

"I suppose you will throw in the saddle and bridle?"

Mr. Gibbs is the man who had such control of his mind, and he tells you that the name of J. H. Mitchell was not in the book.

Mr. Donnelly says he does not remember any such name as J. H. Mitchell, and yet he holds an office. He has the poorest memory for any one under the present Administration, I ever saw. He does not remember the name of J. H. Mitchell. Who does remember it? Mr. Rerdell. But Mr. Rerdell does not say what he had charged to J. H. Mitchell; he does not say what was in the book as against J. H. Mitchell; he fights clear of that charge. And why? He was afraid that John H. Mitchell might testify. According,

I think, to Mr. Rerdell, there was a charge against Belford on those books. I do not know why Belford's name did not appear on the memorandum, but I will come to Belford afterwards.

Mr. BLISS. Mr. Ingersoll, Mr. Donnelly does not mention in any way and is not asked on the subject of Mr. Mitchell.

Mr. INGERSOLL. I think he is. I will find it after awhile if I can, and if I cannot I will admit that you are right. I do not know where it is. I do not wish to be interrupted.

Mr. BLISS. I claim the right.

Mr. INGERSOLL. Well, go on; the poor man only had seven days in which to make his speech.

Mr. BLISS. I have before me Mr. Donnelly's evidence, and he does not mention the name of Mitchell in any manner, and is not asked about it, so far as I can see. I think when the statement is persisted in there should be some reference given to the page.

Mr. INGERSOLL. It is on page 2637.

Mr. DAVIDGE. And at page 2639, about two inches from the top.

Mr. INGERSOLL.—It is sufficient for my purpose, which is this: That he gave the names of all the accounts he could remember, and in that list of names he did not give the name of J. H. Mitchell. So I think I can fairly say to you that that man did not remember any account against J. H. Mitchell. Mr. Gibbs was asked directly whether there was any account against J. H. Mitchell, and he did not remember any such. Now, the only person that swears to it at all is Mr. Rerdell. Then you come across this contradiction: Why should the name of J. H. Mitchell be there with nothing opposite to it? I do not know. The prosecution, of course, will be able to find writing of S. W. Dorsey that will resemble some of the writing on this pencil memorandum. There is no doubt about that. If it was written by Rerdell in imitation of Dorsey's writing, it is not surprising

that writing really written by Dorsey can be found that looks like it. Why? Because it was written in imitation of his writing, and therefore you can find writing of Dorsey's that looks like it; otherwise it would not be an imitation. The next question arises, Can you find writing of Rerdell's that looks like it? Yes; 87 X. The M. C. R., the S. W. D., and the J. W. D. are all exactly like it. Now, is it not infinitely surprising that Dorsey should imitate Rerdell without trying and without an object? Is it not perfectly wonderful that this memorandum should be in imitation of Rerdell's writing, when it was written by Dorsey? But if it was forged by Rerdell, it is not wonderful that it looks like Dorsey's writing. If Dorsey wrote it without thinking of Rerdell, I say the accident is infinitely wonderful that he imitated Rerdell. Which is the more probable —that Dorsey imitated Rerdell without design and without trying, or that Rerdell imitated Dorsey with a design, and when trying to do so? That is the way to put this argument, and I hope the gentlemen will answer it. The ingenuity that would be displayed in the answer would a thousand times pay me for the loss of the point. I want them to account for this, how Dorsey's natural handwriting comes to look like Rerdell's, and how it is that this looks precisely like Rerdell's in many instances. Why is it, gentlemen? I will tell you. Mr. Rerdell had written the initials J. W. D., S. W. D., and M. C. R. so often that when he came to put them upon this memorandum he forgot to disguise his hand. That is the reason. You find on 87 X the J. W. D. precisely as it is on the pencil memorandum. You find the M. C. R. precisely as it is on the pencil memorandum. You see if you have done the same thing many times with your hand, the hand gets a mind of its own. It is in that way that you learn to play upon the piano. The hand becomes educated and follows the keys through all the mazes of melody without asking one question of the mind. You

can write a name so often, you can make initials so often, that when you come to write them, no matter what your object is, the hand, educated with a mind of its own, pursues the old accustomed motions and paths. That is the reason that J. W. D. and S. W. D. and M. C. R. are exactly in the handwriting of Rerdell in this pencil memorandum. According to that, Dorsey had paid out in all, I think, about $65,000, or something like that. There is no truth in it, gentlemen.

Now, in order to prepare your mind for the next point I am going to make, and in order that you may know something about this man Rerdell, I will give you some further information about him. I do not think you are sufficiently acquainted with his character, and any little points that I have I want to give to you. I want to paint his portrait in every lineament, every mark. I want to give you every hair in his head. Remember that this witness is to be corroborated. He is to be propped and indorsed. Everybody admits that he is the pewter of perjury and has to be plated with the silver of respectability gotten from somebody else. They all admit that. He is an empty bag. Somebody has to fill him up before he can stand upright. They admit that. I want to call your attention to a few things as to which he lacked corroboration.

On page 2215, Rerdell swears that Miner told him that the amounts in the bids were filled in by S. W. Dorsey. On page 4177 *Miner* denies this, and says that he filled in the bids with only two exceptions.

On page 2216 Rerdell swears that the mail matter for J. W. Dorsey, Peck, and Miner was handed him by S. W. Dorsey, and that Dorsey said that he was going to take the business out of Boone's hands. On page 3766, *Dorsey* swears that he had no such conversation with Rerdell.

On page 2217, Rerdell swears that S. W. Dorsey applied

to him to go West. On page 3768 *Dorsey* swears that he did not employ him to go West.

On page 2218, Rerdell swears that he received instructions from S. W. Dorsey as to what to do on the Bismarck route. On page 3769, S. W. Dorsey swears that that is utterly untrue.

On page 2219, Rerdell says that he was instructed to establish a *paper post-office* sixty miles north of the route. What was that for? According to his testimony there was a mistake in the advertisement, and the route was too long, and this was a device to shorten it by adding sixty miles to it to make a post-office thirty miles off the route, or sixty altogether, so as to get pay for the increase of distance. If it was to be a fraud, why put the post-office off the route? Why not have it on the route? Where would the fraud be if they traveled the sixty miles except in having a post-office where none was needed? They certainly would make nothing from the Government by traveling the sixty miles. If they traveled the sixty miles they would be paid for that sixty miles, but if they wanted pay for the sixty miles without traveling that sixty miles, they would not have put the post-office so far off the route. They would have put it on the route, or very near to it, and pretended that it was off the route.

Gentlemen, it is infinitely absurd to suppose that Stephen W. Dorsey would have instructed that man to go out in that country and get up a false post-office. How long would a fraud like that last and live? How long could the money be drawn for that service in that country? They say no human being lived there. Who was to be postmaster? Who was to make the reports? How long, in your judgment, would it be before the department would find out that there was no such post-office, no postmaster, and no mail? No one could think of a more shallow device than that. Stephen W. Dorsey, a man who is blest

with as much brain as any man it is my pleasure to know, would never dream of such an idiotic device. And yet, that is the testimony of Mr. Rerdell.

It may be that Mr. Rerdell when he got out there thought he could start a town and make money in some other way. But it will not do to say that Stephen W. Dorsey told him to get up a false and fraudulent post-office when Mr. Dorsey must have known that the mail could not have been carried to it but a few days before it would have become known that there was no such office. They would have to appoint a postmaster and he would have to live there in his loneliness a hermit of the plain, and would have to make a report like that from Agate that gave such delight to Mr. Bliss to read. There was not a letter sent to that place; not one, nor would there be. Mr. Dorsey knew if there was a postmaster appointed he would have to report, and in three months from that time he would have to report, first, that there was no post-office; second, that there had never been any mail; and third, that he did not expect any. You see it is utterly absurd to lay such a charge at the door of Stephen W. Dorsey.

On page 3769 Dorsey swears that the statement is a falsehood—that he never did any such thing. He also denies it on page 3924.

On page 2220 Rerdell swears that he gave *Pennell* a petition for a post-office. On page 2156 Joseph Pennell swears that he never saw the petition; and on page 2171 that he never signed it, and that none was sent.

On page 2221 Rerdell swears that he was instructed by S. W. Dorsey to build stations fifteen or sixteen miles apart, and use every third station. On page 3769 S. W. Dorsey swears that no such instructions were given. On page 4092 J. W. Dorsey swears that they started to build the stations about thirty miles apart, and that after he saw General Miles and was told by that officer that there would be, and

*must be* a daily mail, then he concluded to build stations between the stations that he had built going over.

That is a sensible, straight story. When he went out they built the stations some thirty-odd miles apart, and when he talked with General Miles, General Miles told him that there must be a daily service, and then he determined to build intermediate stations as he went back. What was that testimony sworn to by Rerdell for? To make you believe, gentlemen, that Stephen W. Dorsey when he sent Rerdell out knew that there was to be expedition, and knew it because he was in conspiracy with the Second Assistant Postmaster-General. The testimony of John W. Dorsey lets the light in upon that story. The sun rises, and the mist goes. What is his story? "I went there and built the stations about thirty miles apart, and when I talked with General Miles he assured me that there must be expedition and a daily mail, and then I built stations at the intermediate points as we went back." That is the story. It is consistent with itself.

Is it not wonderful that the Government did not also prove by Pennell that Rerdell gave him instructions to build the ranches, and told him that he had been so instructed by S. W. Dorsey?

On page 2233 Rerdell swears that Miner told him that Vaile was *close to Brady.* On page 4177, Miner swears that it is *not true;* that he never had any such conversation. Why did they want a man close to Brady? As I explained to you before, gentlemen, they had already, according to their testimony, as they claim, proved that Miner had conspired with Brady, and yet he was going around trying to find a man close to Brady. Being a co-conspirator was not close enough. So Mr. Rerdell is corroborated there again by Mr. Miner who swears that what Rerdell swears is a lie.

On page 2224 Rerdell swears that in November, 1878, Miner asked him to write certain words in a line on petition

40104. On page 4178, *Miner* swears that he never asked him to interline any petition.

On page 2225 Rerdell swears he had a conversation with Vaile and Miner on the 20th of December, 1878, at the National Hotel, about his employment, and that he had a great many conversations there. On page 4020, *Vaile* swears that there never was any such conversation. On page 4021, *Vaile* also swears that he has no recollection of such a conversation then or at any time. On page 4178, *Miner* swears that the talk was between Rerdell and himself, and that Vaile *was not there.*

On page 2225 Rerdell swears that Vaile told him that the mail service they had ought to reach six hundred thousand or seven hundred thousand dollars. On page 4021, *Vaile* swears that he does not think he ever said any such thing—does not think it was possible that he ever said any such thing. On page 4179 *Miner* swears that Vaile never made any such statement in his presence.

On page 2226 Rerdell swears that at the instance of *Vaile* and *Miner* he went West, January 4, 1879, to put service on the Rawlins route. On 4022 *Vaile* swears that Rerdell did not go West at his instance; that Miner gave him, Rerdell, a subcontract for the entire pay, for the whole term, and that Rerdell undertook it *on his own behalf.* On 4179 *Miner* swears that he made the arrangements with *Rerdell* himself.

On page 2227 Rerdell says that Vaile and Miner both told him that the service would be increased right away, and to make subcontracts with that in view. On page 4180 Miner swears that he gave him no such directions, and that Rerdell did all he did on his own responsibility, and that Vaile did not give him any such authority. It is for you to say, gentlemen, which of these men you will believe.

On page 2228 Rerdell swears that in March, 1879, he had a conversation with Vaile about an affidavit, and received instructions from Vaile or Miner. On page 4024 *Vaile*

swears that he recollects no such conversation and does not think he ever had it.

On page 2228 Rerdell swears that *Vaile* said in the presence of Miner that he could get *Brady* to accept an affidavit from a subcontractor. On page 4024 *Vaile* swears that he is very sure that he did not say so, and that he never asked *Brady* any such question. On page 4182 *Miner* swears that he never made any such statement in *Vaile's* presence.

On page 2228 Rerdell swears that a day or two after Vaile says he had seen Brady, and that Brady had agreed to accept an affidavit from a subcontractor. On page 4024 Vaile *denies* this.

On the same page, 2228, Rerdell swears that he was instructed by Vaile and Miner to write to Perkins and get him to send his affidavit. On page 4024 *Vaile* swears, "*Never!*"—that he did not know Perkins was a subcontractor. On page 4182 *Miner* swears that he has no recollection of it, and that he never instructed Rerdell to send any form of affidavit to Mr. Perkins.

On page 2230 Rerdell swears that Miner wrote a form of affidavit. On page 4182 *Miner* swears that he has no recollection of it, and that he never instructed Rerdell to send any form to Perkins. As a matter of fact the Perkins affidavit is in the handwriting of Rerdell. Yet he tells you that Miner wrote the form. It will not do.

On page 2231 Rerdell swears that he filled in blanks under the direction of S. W. Dorsey—that is, of the Perkins affidavit—and filed it under the direction of S. W. Dorsey. On page 3793 *Dorsey* swears that he never knew there was such an affidavit, and that he never gave such instructions; and more than that, *that he never* at any time or place *gave Rerdell authority to change any affidavit or any petition* that was to be filed.

On page 2233 Rerdell swears he was instructed to make

the subcontract without any reference to expedition, and that he, Dorsey, would guarantee the payments if they were not filed. On page 3771 *S. W. Dorsey* swears that he gave him no such instructions.

On page 2234 Rerdell swears that affidavits of Peck and Dorsey were acknowledged in blank. On page 4189 *Miner* swears that so far as he remembers they were filled in before they were signed.

Again, it may be proper for me to say here: Why did not the Government call J. S. Taylor, the notary of New Mexico, to prove that the affidavits were in blank when they were sworn to by John M. Peck? Why did they not? The law presumes that every officer has done his duty, and when we find at the foot of an affidavit the certificate of a notary public the law presumes that the paper above it was in the precise condition at the time the certificate was placed there in which it is then. That is the presumption of law, and there is only one way to overcome that presumption. You must prove to the contrary. One of the easiest ways on earth to do that is to bring the officer. They did not bring J. S. Taylor here from New Mexico, the man before whom Peck acknowledged the affidavit in this case. It would have been easy to have him come, and to have asked him whether Peck did not swear to all these affidavits in blank. They did not call him. They had him here once and that was enough. They did not call him this time. They did not call Rufus Wainwright, of Middlebury, Vermont. He is the officer before whom John W. Dorsey swore to these affidavits. The gentlemen of the prosecution say the affidavits were in blank, and yet they dare not put upon the stand the notary before whom they were sworn to. It was not because they did not think of it. It was not because they had not the money. The Government had money by the million and agents by the thou-

sand. You recollect how they tried to prove the destruction of those dispatches in the Western Union office. You recollect how they brought here the superintendent, how they brought here agent after agent, how they brought here the man that went around and collected the dispatches, and the man that drove the wagon, and the man that owned the wagon, and the boys that received the dispatches on the street, and the man in the cellar that received them after they got there, and the man that bought them, and the book-keeper that made out the check to pay for them. They brought the man that receipted for them at the railroad, and they followed them from the railroad to Holyoke, Massachusetts, and brought the superintendent of the factory and the books of the railroad to show they had arrived. They followed those dispatches from paper to pulp and yet it never occurred to them to send to Middlebury and get Rufus Wainwright. They never thought to have J. S. Taylor subpœnaed from New Mexico. They had all the conveniences of modern civilization at their command and yet they never thought of getting Wainwright or Taylor.

On page 3771 S. W. Dorsey swears that he never instructed Rerdell to get any affidavits in blank. On pages 4126, and 4107, J. W. Dorsey swears that he made none in blank; that he has no recollection of any such thing. On page 2240, Rerdell swears that he had a conversation with S. W. Dorsey about getting blank affidavits. On page 3771 S. W. Dorsey denies it. On page 2241 Rerdell swears that S. W. Dorsey instructed him to make up the affidavit on route 41119 and gave him the per cent. of the increase of pay. What does he say there? From one hundred and fifty to two hundred per cent.

Mr. MERRICK. That was afterwards corrected.

Mr. INGERSOLL. I thank you for the suggestion. That happened on Friday. We adjourned until the next Mon-

day morning. He came in the next Monday morning, and he said that he had made a mistake, and that it ought to be from one hundred and fifty to two hundred and fifty per cent. I immediately went and got the affidavits on the Toquerville route, because I said the percentage must be over two hundred per cent. in that affidavit or he would not have changed. I found in the affidavit that it was two hundred and fifty-five per cent., and I found that was why he changed. I followed that out, and I found that was the same route upon which Mr. Rerdell stole nearly five thousand dollars, according to the testimony of S. W. Dorsey, and Rerdell did not deny it. So much for Toquerville and Adairville. We will come to it again perhaps.

Let me give the pages where all these matters are found. On page 3772 Dorsey denies the conversation about the affidavits, and also on page 3773. Rerdell's, change of his evidence will be found on page 2277.

On page 2243 Rerdell swears that while he was in jail S. W. Dorsey had a key to what he called his, Rerdell's, office. On page 3735 S. W. Dorsey swears that he never had a key to Rerdell's office, and that he never was in the office but twice, both times with Rerdell, and that he never took a paper out of the office except what Rerdell gave him. It will also be remembered that when Rerdell was asked in his examination-in-chief whether anybody had a key to his office he replied that S. W. Dorsey had a key to his office. He did not at that time state that his wife had a key. Why? Because he wanted it understood that S. W. Dorsey was the only person that had a key, and that S. W. Dorsey, while Rerdell was in jail, went to that office and opened it and robbed it. On cross-examination I made him swear that his wife had a key, and we afterwards found that his wife went there. He knew she had a key. Still, in his cross-examination, when asked who had a key, he said S. W. Dorsey. What was that for, gentlemen?

So that you would infer that S. W. Dorsey was the only person who had a key, and that he went there and robbed that office, as I said before. On pages 2634 and 2635 Mrs. Cushman swears that she went to Rerdell's office with Mrs. Rerdell. When? About six o'clock in the morning. And that they found the office open? No. They found the office locked, but found papers in a confused condition, and took away some papers. They were there about fifteen minutes. Recollect this was the third morning that Rerdell was in jail. Rerdell went to jail Monday evening. That made the visit of Mrs. Cushman and Mrs. Rerdell on Thursday morning, and they went there at six o'clock. Keep that in mind. Rerdell got out of jail on Friday. George A. Calvert, the janitor, visited every room frequently. His testimony is on page 2672. He swears he found the door of Rerdell's room unlocked. When? The day before Rerdell got out of jail. What time of day? In the morning. What morning was that? Thursday morning. When did Rerdell get out of jail? Friday morning. When did Mrs. Rerdell and Mrs. Cushman visit the room? Thursday morning. What time in the morning? Six o'clock. When did Calvert find the room open? That same morning. The women swear that when they went there the room was locked. Now the question arises, who opened it? The women. That is all there is to that.

Mrs. Rerdell, on page 2635, swears she got the key on the second day after Rerdell's incarceration, in the evening. That would be Wednesday evening. She used it the next morning, Thursday.

On page 2247 Rerdell swears that on the 20th of December, 1878, Vaile promised him a good salary. On page 4021 Vaile swears that he has no recollection of any such promise. That is what they call corroboration. On page 2348 Rerdell swears that in May, 1879, S. W. Dorsey said, "You know that John is a man of very little judgment.

He does not know how to talk to these contractors." On page 3773 S. W. Dorsey swears that there never was any such conversation.

On page 2249 Rerdell swears, " As secretary and manager, I kept the books for a short time." On page 3636 W. F. Kellogg swears that he, Kellogg had entire charge of Dorsey's books from the summer of 1872 to the fall of 1879, and that nobody else ever made a scratch of a pen in those books. On page 2270 Rerdell swears that Dorsey and Bosler were having a settlement in New York and sent for the books, and that he took the original books over and left them there, and that he went over to New York in June, 1881, and saw both books there and brought the journal over and left the ledger. On page 3955 Dorsey swears that the first settlement he had with Bosler was in December, 1879, or January, 1880. Rerdell swears that the time he got the copy made of his journal by the Gibbses, was between Christmas, 1879, and 1880. Dorsey swears there was not another settlement until November, 1882. The first settlement being in 1879, and Rerdell swearing that he took the books over for a settlement, shows that he did not have them here in Washington to be copied at the time he says and at the time other people swear that they copied them.

On page 3788 S. W. Dorsey swears that he never sent for any transcript, and that he, Dorsey, referred to the route-book, and that Rerdell never sent any such book or books as he claimed. On page 2271 Rerdell swears that he gave copies of the journal to Dorsey in June, 1881. That was the time that he made the affidavit. His language by any natural interpretation means that he handed those copies over to Dorsey at the time he made the affidavit on the 20th of June, 1881. On page 3988 Dorsey swears that he did not, and on page 3785 he again swears that he never had them. On page 3784 he again swears

that Rerdell never brought any book to him except the route-book. On page 2271 Rerdell swears that Dorsey, on the 13th of May, 1879, told him to make up a statement of the routes showing the profits, and that he thinks he gave it to Bosler. On page 3875 Dorsey swears that he never made up any such statement by his direction, and that he never gave Rerdell such an order. Why should he? According to Rerdell's own statement, in which there is not a particle of truth, Dorsey, on the 13th of May, 1879, that very day, had written a letter to Bosler, in which he told him about the profits, about how much it had cost him, and about how much it would cost him, and about how much the profits would be, and how much he paid to Brady. After writing such a letter to Bosler, containing all the facts, why would he want Rerdell to make up a statement that was already in the letter itself? Nobody can answer. There is not genius enough in this world to make the answer.

On page 2272 Rerdell swears that he saw 7 B, which is a petition, in 1879, and that there were three words in his own handwriting that were not there when he first saw it, the three words being "and faster time." He also swears that he was instructed to put them in by S. W. Dorsey. I now say that Mr. Rerdell never wrote those three words. On page 783 it appears that 7 B was filed April 18, 1879. On page 3786 S. W. Dorsey swears that Rerdell's statement is false. I will now turn to the testimony of George Sears about the petition, 7 B, which Mr. Rerdell swears was altered by interlineation or the addition of three words, "and faster time." The page is 829.

Here comes a witness of the Government, apparently a good and honest man, and he swears that the words "and faster time" were in that petition when he signed it. I will take his word for it. I will take his guess as against the other man's oath.

On page 2273 Rerdell swears that he altered 11 B and 12

B by instructions of S. W. Dorsey. Now, gentlemen, Stephen W. Dorsey got such a momentum of crime on him and got running at such a rate that he could not stop, and whenever a petition came in he had it altered without reading it. It did not make a bit of difference what the petition asked for. He just said to his clerk, "Look and see if there is not any line you can add something to. I want something put in it, and I want it put in now." Mr. Rerdell says he did these things without any thought. He just made the changes as he was told, without considering whether it was right or wrong. He told you here on the stand that at one time he was requested to get a petition, and he had a lot of names on hand, and so he just wrote a petition and stuck the names to it. He could not even remember the route it was on. It was a matter of so little importance that he did not charge his memory with it. He was told to get a petition in the regular way, and instead of doing that he said he took some names that he had and just wrote a petition and stuck the names on, because that was easier; and it was a matter of so little importance he really did not remember. He was like the gentleman in Texas who was tried for murder, but did not remember the name of the man he killed; he did not charge his mind with it.

Now for 11 B:

Hon. D. M. KEY, *Postmaster-General:*

We, the undersigned, citizens of the State of Colorado, residing near and getting our mail at Muddy Creek post-office, on route 38135, from Pueblo to Greenhorn, respectfully represent—

I never noticed before that the "p" is interlined in the word "represent." I have no doubt that was done by order of Dorsey—

that it is necessary that the service on said route should be increased from two trips per week to six trips per week, and a faster schedule. This section of the country is being rapidly settled by people of intel-

ligence, and we ask the increased service for the benefit of us who have already made our homes here, and also as an inducement to others to settle. We also request that the schedule time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the route may get their mail at a seasonable hour.

I have read the petition as it was in the first place. The Government tells you that after that petition came here, and after it had been submitted to Stephen W. Dorsey, he told his clerk to add in the first part of the words "on quicker time;" and yet if he had read the last paragraph he would have seen quicker time was there called for. Rerdell says Dorsey told him to insert the words "on quicker time," and when I read this last paragraph to him he was stuck. Then what did he say? When he got into that little corner and was looking for a mouse-hole, he said he didn't read it and didn't know it was there. Do you believe that a man like Stephen W. Dorsey would deliberately have a petition changed, would deliberately forge a petition, without knowing what was in it and without knowing whether the necessity existed for changing it or not? That falsehood has not even a fig-leaf to cover its absurdity.

Here is 12 B. It would not have taken long to have read that. Rerdell said Dorsey had him put in the words "and a faster schedule." I will read the last paragraph to that:

We also respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the line may get their mails in a seasonable hour.

He says Stephen W. Dorsey, a man of sense, got that petition, read it all over, and then told this fellow to put in "and a faster schedule" when right in the next paragraph it asked for eight hours. A man who will swear that way had rather tell a lie on ninety days' credit than tell the truth for cash. Just look at it. That is what they call a corroboration. The more you look at this testimony

the more absurdities you find. Every truth has an infinite number of signs. Every truth has to fit an infinite number of things. Infinite wisdom could not manufacture a falsehood that would stand the test of investigation.

On page 2272 Rerdell says, speaking of the three petitions, 7 B, 11 B, and 12 B, "We," meaning S. W. Dorsey and himself, "had examined these petitions together, and he," meaning S. W. Dorsey, "told me to put in the clause for expedition." Now, 7 B was filed April 18. That is the day he left for the West. 11 and 12 B were filed on the 8th of May. If they had them all at one time together, and if he and Dorsey had talked about them, why were they not filed at the same time? Why was one filed April 18th and the other two on the 8th of May? That testimony of Rerdell's will not do.

On page 2279 Rerdell says that he found among Dorsey's papers the tabular statement, about the middle of April, 1879. In the first column was the number of the route; in the second the termini; in the third the pay; in the fourth the anticipated pay by percentages, and in the fifth the percentage to T. J. B., thirty-three and one-third, with the figures carried out at the end of the column. He tells you that he had that tabular statement when he first went to MacVeagh. That tabular statement was in the handwriting of S. W. Dorsey. Yet the Attorney-General was not satisfied. He wanted that backed up by a book not in the handwriting of S. W. Dorsey. That will not do. Rerdell also tells you that at the time he went to the Attorney-General he not only had that tabular statement, but he had a letter-press copy of the original letter that Dorsey wrote to Bosler on the 13th day of May, 1879. He had that letter, the original of which was in Dorsey's handwriting, in which he admitted he had paid Brady twenty thousand dollars. He had the tabular statement in Dorsey's own handwriting in which he was to pay thirty-three and one-third per cent. to

Brady. Yet the Attorney-General did not think there was sufficient evidence, and said, "You had better go to New York and steal a book that Dorsey never wrote a word in." Oh, no; that will not do.

On page 2280 Rerdell swears that he lost that memorandum. I guess he did. On page 3785 S. W. Dorsey swears that he never made any such memorandum. On page 2280 Rerdell swears that he employed Gibbs and wife to make a true and correct copy of the books in March, 1880; that he was directed by S. W. Dorsey to send him a true transcript of the books in order to settle with Bosler, and that Gibbs and wife copied the journal and ledger, and that he sent the copy to New York. On page 3788 Dorsey swears that he never heard of the employment of Gibbs and wife, and that he never received any such books or transcripts. On page 2644 Gibbs swears that his wife copied only the journal, not the ledger. Yet Rerdell swears that he copied the journal and the ledger. On page 2644 Gibbs again swears that Rerdell brought him one book. What color was it, red, brown, or black? Rerdell says he took him two red books. Gibbs swears he got one brown book or one black book. That is what they call corroboration. On page 2320 Rerdell swears with regard to the paper 2 A, that the words, "schedule thirteen hours" were written by Miner. If those words, "schedule thirteen hours," were not written by Rerdell, then—they were written by somebody else. [2 A handed to Mr. Ingersoll.] I guess this is the petition that was fixed up. It looks as if it had been to a hospital. Rerdell says Miner wrote the words "schedule thirteen hours." Just look at that word "thirteen," gentlemen.

You have no idea how it affects your imagination and brain to be indicted seven times. On page 2209 Boone swears with regard to this same paper and the same words, that there is nothing in the handwriting to indicate that it was written by Miner; that it is a back-hand; a changed handwriting. On page 4186 Miner swears that it is absolutely not true; that the words "schedule thirteen hours" are absolutely and posi-

tively not in his handwriting, and further that he never filed the petition. Gentlemen, evidence of handwriting is very unsatisfactory necessarily. Men do not always write the same. The same man does not always write the same hand. There is the difference of pen, the difference of ink, the difference of paper, the difference of position, and the difference, too, of the man's feelings. At one time he feels in splendid health and at another time he may be tired and worn out. The paper may not be in the same position. The slope of the desk may be different. Countless reasons change the handwriting of a person, and when a man swears that certain handwriting is or is not another's handwriting he must swear on the general appearance; he must swear on the impression that it first makes upon him.

I know Mr. Smith and I know Mr. Jones, but it may be that I could not describe the differences in the faces of the two men so that a stranger could afterwards tell them. Yet I know them. It is the effect of all the features upon me. I cannot say it is because of the ear of one, or his nose, or his mouth. I know the combination. I remember the grouping of the features and the form, and that is all I remember. If I am shown a paper and asked, "Is that Mr. Smith's handwriting?" I say it is, or I say no. Why? Because it looks like it or it does not look like it. I cannot recognize it because an "e" is made in a certain way or because a "d" is turned in a certain way, because the next day he may turn it the other way. You have got to go upon the general impression. On page 2336 Rerdell swears that the oath on route 38140, marked 5 E, was filled in by S. W. Dorsey; that the word "twelve" was written by him, Rerdell, after it was filed, and was written because Turner told him that the schedule must be twelve hours; that Turner handed him the oath and he thereupon changed the "fifteen" to "twelve." On page 3355 Turner swears that he has no knowledge of any alteration in any

affidavit. On page 3793 S. W. Dorsey swears that he did not know there was any such affidavit; and he also frequently swears that he never asked Rerdell to change any affidavit that had been filed, and that he never gave any such orders. These gentlemen find one affidavit about which we did not ask Mr. Dorsey particularly and they say, "You have not contradicted that." When a man swears that he never gave an order about *any* affidavit, that covers *every* affidavit.

On page 2337 Rerdell swears that the oath marked 20 F, on route 38145, was filled in by him after it was signed, under the direction of S. W. Dorsey. On page 3793 Dorsey denies giving any such directions.

On page 2338 Rerdell swears that blanks in the oath 22 F, the second oath, were filled in by S. W. Dorsey, but will not say whether before or after execution. On page 3771 Dorsey says he does not remember doing any such thing; but certainly there is no evidence that Dorsey did this after the affidavit had been made.

On page 2339 Rerdell swears that the words "ninety-six" in the petition 14 H, were written by Miner. Boone, on page 2709, declines to say that Miner wrote them. On page 4273 Miner swears that the words are not in his handwriting, that he never wrote them. On page 2298 Rerdell swears that he signed a check "S. W. Dorsey by M. C. Rerdell," and that he had that check at home. It may be that is one of the checks for June drawn upon Middleton's bank that we could not find.

On page 2340 Rerdell says that the oath marked 8 I, on route 44140, was filled in by him in Washington after it was signed and sworn to, under the direction of S. W. Dorsey. On page 3792 S. W. Dorsey denies that he gave any such directions.

On page 2342 Rerdell swears that S. W. Dorsey signed the name of J. M. Peck to the warrant 55 G. I have for-

gotten the day that the draft was given, but I think it was the 2d day of August. It was paid on August 25, 1880. All I have to say is that there was an abundance of time for that draft to go to New Mexico and to be signed by John M. Peck; there was thousands of time. It makes not the slightest difference who signed the name of John M. Peck to that warrant. The question is, was that money coming to John M. Peck? No. John M. Peck had sold out his interest. He was not entitled to one dollar, and it made no difference who signed his name to the check. Does it show that there was a conspiracy if Dorsey signed his name after Peck had sold out his interest in the routes? Any draft coming to him came to him simply as the trustee and the draft was for the benefit of the person who bought him out. Suppose Mr. Dorsey had signed his name. Would that prove that there was any conspiracy? It would simply be in accordance with his right as the matter then stood. He was entitled to that draft and Peck was not entitled to that draft. Why? Because he had bought him out and paid him ten thousand dollars for his interest. That was all. Yet they would claim if that draft happened to be indorsed by Mr. Dorsey that it would be evidence of a conspiracy entered into in the fall of 1879.

On pages 2348 and 2361 Rerdell says that figures were inserted in all affidavits given him by S. W. Dorsey, except on route 41119, and that Dorsey told him, Rerdell, to put them in the blanks. On page 3793 S. W. Dorsey denies that.

On page 2223 Rerdell says that in August, 1878, he had a talk with Miner, who said that they could do nothing while Boone was in the combination; that Brady was hostile to Boone, and that Boone's place was to be taken by Vaile; and that Miner asked his opinion about Vaile, and asked what Rerdell thought about Dorsey's approving it, adding that Vaile was very close to Brady. On page

4177 Miner swears that he has no recollection of the conversation, and does not believe any such conversation ever occurred.

Ah, but they say that when a paper was handed to Mr. Miner, an affidavit for instance, he could not give you the history of it; he could not tell you where he was when he wrote it; he could not tell you where he was when he filled it. I would not have believed his testimony if he could. He had to take care of some ninety-six routes. Upon those routes there were numberless papers, notices from the department, notices of fines and deductions, of remissions, and everything of that kind. On each route there were probably a hundred papers, and may be more—petitions, affidavits, and papers of all descriptions. If a man should stand up here five years afterwards and pretend that he knew the history of each paper, I would know he had not the slightest regard for truth.

Mr. Miner said when he was shown a paper, "I don't remember ever having seen that paper before; I don't remember when it was written." That was the truth. If he had wished to stain his heart with perjury he could have said, "Yes, I remember it. I know absolutely the time I wrote it. I know I sent it to New Mexico. I know it was filled up before it was sworn to"; but he was honest enough and he was brave enough to face the truth and say, "I don't remember," and I respected him for it when he did it. Whenever you hear the truth, as a rule the first thought is, "May be it won't do." But if it is the truth, the longer you think about it the better it seems, while if it is a lie, the longer you think about it the worse it gets. It would have been, apparently, to Mr. Miner's interest to say, "I remember it perfectly," but the man had honor enough to tell the truth. And when you come to investigate his evidence it sounds much better than though he had pretended to remember time and place.

I call your attention to page 2446; that is about the affidavit.

On page 2384 Rerdell speaks of the charges made to Samuel Jones and James B. Belford for two thousand dollars. Then Mr. Bliss in his speech, which I will come to after a while, says that Mr. Rerdell spoke about a charge to J. B. B. He never did, never. He said James B. Belford. I started the J. B. B. business. I was the first one who ever said it, and Mr. Rerdell never swore J. B. B. Then they sent out to Denver to get a fellow who had the same initials. I will come to this man after a while.

On pages 2429 and 2430 Rerdell swears that he had two balance-sheets of the books, made by Donnelly; that he showed them to MacVeagh and Woodward. How does it happen that Woodward was not sworn about it? Nothing would have been of more importance, if they wished to prove the existence of the two red books, than to prove by Woodward that Mr. Rerdell, in June, 1881, showed him copies of those balance-sheets or the balance-sheets themselves. They did not bring Mr. Woodward on the stand. Why? Mr. Woodward, in my judgment, had he come upon the stand, would have sworn to the truth. Rerdell says, "I do not know where they are." Then he paused. Then I saw the working of his mind just as plainly as though his skull had been opened. He got himself together and swore that he gave them to Dorsey in July, 1882. He had to get them out of his hands some way.

On page 3736 S. W. Dorsey swears that he, Rerdell, did not give him any balance sheets.

On page 2434 Rerdell swears as to the papers he gave to Dorsey—the original journal, and copy of the Oregon correspondence made by Miss Nettie L. White. Miss White was not called. He gave these, he says, to Dorsey, July 13, 1882. On page 2793 Dorsey swears that he did not give them to him, nor did he give a paper of any kind.

On page 2461 Rerdell is asked if he did not admit to Judge

Carpenter, in January, 1882, that he had a memorandum written by himself, which he showed to James and MacVeagh, and that he made it so much like Dorsey's handwriting that he did not think anybody could tell it. What was his answer? "I may have done so." Honest man!

On page 2462, in answer to the question, "Did you not tell Carpenter that you brought no book from New York?" the honest man answered:

Very likely I said I brought no book over from New York.

On the same page, in answer to the question, "Did you not tell French that you were trying to entrap James?" he admits that it is likely he was.

On page 2463 he admits that he may have told French that he had learned to imitate the handwriting of Dorsey so well that Dorsey himself could not tell the imitation; and that he wrote that memorandum in pencil because he could the more easily deceive. Honest man!

Mr. Bliss holds S. W. Dorsey up to scorn because he endeavored to turn two men out of the Cabinet on the testimony of Rerdell; and yet he is trying to put four men in the penitentiary on the same oath. Do you not think that it is better to get a man out of the Cabinet than to put another into the penitentiary? And do you not think it is better that a man be put out of office than that he be put into the penitentiary, his family destroyed, and his home left to ruin, upon the oath of a man who swears that the oath was a lie? Dorsey was an awfully wicked man to try to get Mr. MacVeagh out of office on Rerdell's testimony. But now they turn around and want to put Mr. Vaile and Mr. Miner into the penitentiary on the same testimony. The other testimony was the best, because we did not promise him immunity. I will come to it after a while.

On page 2465 Rerdell swears that he did not have any pencil memorandum that he showed to MacVeagh, claiming that it was in the handwriting of Dorsey, and was asked, "Did

you not tell Bosler that you had?" What does he say? "Possibly I did." "Did you not tell Bosler that you wrote it?" "Possibly I did."

S. W. Dorsey swears on page 3810 that Rerdell told Bosler that it was in the waste-basket, and Bosler took the pieces out and put them together. Rerdell says he had written it, and in pencil, so that it would look more like Dorsey's handwriting. Why did you not ask Bosler about it, gentlemen, when you had him on the stand to prove your letter? Even Mr. Bliss, in his speech, asked, "Why didn't they call Bosler?" Why didn't you have the fairness to tell all the circumstances? I will tell them all when I get to that part of it. Why did you not tell them that you had looked all through Mr. Bosler's books?

On page 2466 Rerdell swears that he did not get that memorandum out of the waste-basket, but got a note from MacVeagh, and that Dorsey was present.

On page 3810 Dorsey swears that it was a pencil memorandum imitating his (Dorsey's) hand closely.

On page 2466 Rerdell admits that he very likely told Bosler in June, 1881, that he had no book on the train and brought none from New York. In answer to my question, he says, "Possibly I did," or "Probably I did," tell Bosler. I cannot bring other witnesses to contradict him when he admits that he did. That is enough for me.

On page 2467 he admits that he very likely told Judge Wilson about the affidavit; that if he told him anything, he told him that no such book existed, and that there was no necessity for any book except an expense book.

On page 2469 Rerdell swears that he had a copy of the day-book and ledger in June, 1881, in Dorsey's office; that Dorsey took them that day, and that they had been there ever since they were made, to be carried to Congress. Then he began to gather his ideas, and he says:

Hold on. I am mistaken. These books were all sent over to New York before that, in the summer of 1880, when I carried the originals

over for the last settlement I was present at, between Dorsey and Bosler.

There was no settlement in 1880, the time he speaks of. Mr. Merrick then says:

Q. There were two sets of those copies?

That would be four copies and two originals.

A. No, sir.

On page 3955, S. W. Dorsey swears that he had the first settlement with Bosler in December, 1879, or January, 1880, and had no subsequent adjustment until November or December, 1882; no settlement between those dates. Yet Rerdell says that he took those books over in the summer of 1880 for a settlement, when there was no settlement, and at the same time carried the originals. A moment before he had sworn that the originals were there in the office in June, 1881.

On page 2470 Rerdell swears that he did not give the books to Dorsey in 1881.

On page 2447 he swears that he did not have the balance-sheet in New York; that he had it in the office in June, 1881.

On page 2479, Rerdell, in speaking of the pencil memorandum, was cornered, caught. He said, "I have kept it as a voucher." Then finally he admits that it was not his property, but was the property of Dorsey; and the last admission he made upon that subject was, "I stole it." He says that while he was in jail somebody got into the office and destroyed his papers. And yet, on page 2480, he tells that the first time it ever occurred to him to use that pencil memorandum was after the first trial was over. Can you believe that? He was trying to steal it on the 13th of July, 1882; was trying to go over to the Government on the 5th day of July, 1882, and did not think that he had that pencil memorandum! Writing a letter on that day to Dorsey; giving him notice that he was going to desert him;

saying in that very letter that he had been persuaded by Bosler to make the first affidavit; saying that he was making preparations to go to the Government, was going to set himself right, and yet did not remember the pencil memorandum! Why? Because he manufactured it afterwards. He says that within a day or two after he was out of jail he found this paper a second time. He found it before, and laid it carefully away as a voucher. Then he lost sight of it. Then he was trying to sell it to the Government, and he forgot it; trying to blackmail Bosler and Dorsey, and forgot it. When he got out of jail he found it. That will not do. How does he say it got to his house? His wife carried it from the office while he was in jail. And yet he would have us believe that Dorsey broke into that office and stole all the papers. And yet he says that was in the office, and Dorsey did not take it. It will not do. He manufactured that paper after that time.

On page 2481 Rerdell swears that he did not know that he had that paper at that time, at the time he says his wife got the papers. I say he did not; I say he made it afterwards.

On page 2490 Rerdell swears that he had those red books in the office at 1121 I street; that he never made any effort to conceal them. And yet Kellogg never saw one of those books; never saw Rerdell working upon them, and never saw them in the office.

On page 2491 Rerdell swears that he thinks Kellogg did some work on those red books; that Kellogg helped him (Rerdell) make the first entries. On page 3636 Kellogg swears not only that he did not help him to make those entries, but positively swears that he never even saw any such books.

On page 3635 Kellogg swears positively that Rerdell did not keep any books, but a private expense-book and a route-book; and that he (Kellogg) never saw any other

books; that he never saw a ledger or journal in red leather, kept by Rerdell. He swears that he himself kept the three books (the journal, ledger, and cash-book,) and that Rerdell never made an entry in them.

On page 2512 Rerdell swears that he never imitated Dorsey's handwriting, or tried to, in Kellogg's presence. On page 3636 Kellogg swears that he saw him do it.

On the same page (2512) Rerdell swears that he never signed Dorsey's name to show Kellogg that he could imitate it. On page 3636 Kellogg swears that he did do it.

I have just given you a few, gentlemen, of the corroborations of this man Rerdell. Recollect that you cannot believe him unless he is corroborated. If you believe him at all you have got to believe all, unless you believe he is mistaken. Where a man comes on the stand as an informer—and I do not call him an informer—even in that capacity he has to be taken altogether or not at all.

Now, with all these contradictions upon his head, I will now come to the affidavit of July 13, 1882. You will remember that I read you the letter of July 5, in which he says that Bosler got him to make the affidavit of 1881. At page 2374 Rerdell gives an account of this affidavit. Dorsey got him in Willard's Hotel, locked the door, and had him. Now, he said to him, "Mr. Rerdell, I will tell you what I am going to do with you: I am going to have you prosecuted for perjury." Let us imagine that conversation. Rerdell replies, "What are you going to have me prosecuted for?" "For making the affidavit of June, 1881." "Why," says Rerdell, "in that affidavit I swore you were innocent." Says Dorsey, "Don't you know you swore to a lie? Do you think I would stand a lie of that kind, sir? Do you think I will allow any man willfully, maliciously, and with malice aforethought, to swear that I am an innocent man? I will have you arrested to-night, sir." "Well," says Rerdell, "my good God, ain't there any way I can get

out of this?" "Yes; make another affidavit just like it. Now, sir, you have perjured yourself and I will arrest you for perjury unless you do it again." "Well," says Rerdell, "when I get that done you will have two cases against me." "I can't help it," Dorsey says. "Is that the way you treat a friend? I swore to that lie from pure friendship. Don't you remember you took me by both hands and begged me, for God's sake, and for your wife's sake and your children's sake, to make that affidavit? And now are you going to be such a perfect devil as to have me arrested for perjury for making that same affidavit?" Dorsey says, "Yes, sir; that is the kind of man I am." "Well, but," says Rerdell, "don't you know the trial is going on now? They are trying to prove, now, that you are guilty, and in that affidavit of mine I swore you are innocent, and how are you going to prove a man guilty when you swear that he is innocent?" Dorsey says, "That is my business, not yours. I am going to have you arrested." "But," says Rerdell, "you had better hold on, I tell you." "Why?" "I have got the red book that I got in New York." Dorsey says, "I don't care." Rerdell says, "I have got the pencil memorandum that you made for me to open the books upon, and charge William Smith with eighteen thousand dollars. And you wrote John Smith first, and I changed it to Sam Jones, don't you recollect, as otherwise there would be two Smiths? And there is the account against J. H. Mitchell, and J. W. D., and cash, and profit and loss." Dorsey says, "I don't care about that. I am not going to allow a man to commit perjury. I am going to have you arrested." Rerdell says, "You had better not have me arrested." Dorsey says, "Why? What else have you got?" "I have got a copy of the letter that you wrote to Bosler on the 13th of May, 1879, in which you say that you paid twenty thousand dollars to Thomas J. Brady. That copy was made by Miss Nettie L. White." "Do you believe I care anything

about that? You have perjured yourself, and it is no difference to me whether it was in my favor or not. Justice must be done, and I am going to have you arrested." Rerdell says, "You had better not. I have got a tabular statement in your handwriting, Dorsey, where you had a column for the amount due and the amount received, and another column for thirty-three and one-third per cent. given to Brady, and then at the top, in your handwriting, 'T. J. B., thirty-three and one-third.'" Dorsey says, "I don't care what you have got." Rerdell says, "That ain't all I have got, Dorsey. I tore out of your copy-book a copy of the letter I wrote to Bosler on the 21st or 22d of May, 1880, in which I told him that I had gone to Brady, and that Brady said you were a damn fool for keeping a set of books, and suggested to me to have some copies made, and I had the copies made, and I can prove the copies by Gibbs if he does not try not to remember that he made them. Now, go on with your rat-killing; go on with your perjury suit." Dorsey had him already locked up there, don't you see? But Dorsey was bent on having that man arrested for perjury because he had sworn that he (Dorsey) was innocent. Dorsey was implacable.

What else did he do? He put his hand in his pocket and said, "Do you see those letters to that woman?" Then, sir, when he saw the handwriting he was like that other gentlemen that saw the handwriting on the wall, and he began to get weak in the knees, and says, "Dorsey, I hope you are not going to have me arrested for perjury. I am willing to do it again right now, on the same subject."

Now, it turns out that at that time Dorsey did not have those letters. Dorsey swears that he never got those letters until after Rerdell was put upon the stand. And after he swore that, the Government had the woman to whom the letters were written subpœnaed. Why did they not place her on the stand? That is for you to answer,

gentlemen. That is the affidavit of July 13. Recollect, there was a trial going on at that time in which Dorsey was insisting that he was innocent, and although Rerdell had sworn that he was, he was going to have him arrested right off.

What else did he have against Dorsey at that time? Now, says Rerdell, "Dorsey, don't you have me arrested for perjury. I have got a memorandum of that mining stock that was to be given to McGrew and Tyner and Turner and Lilley for corrupt purposes."

What else did he have? After he had agreed to make the affidavit, Dorsey wrote out what he wanted him to swear to, in pencil, and gave it to him. And when he got his liberty, when he walked out of that room a free citizen, he had all the papers I have spoken of not only, but he had in his possession a draft, in Dorsey's handwriting, of the affidavit Dorsey wanted him to make. He made the first affidavit from friendship; the second from fright. You know he never took a dollar for an affidavit. He was not that kind of a man. You might get around him by talking friendship or you might scare him, but you could not bribe him; he wasn't that kind of a man. Armed with all these papers he was frightened; so he made the affidavit of July 13.

Now, let us see. He admits that—I will not say every word, but the principal things in the affidavit of June, 1881, are false. He swore to them knowing them to be false. But he tried to get out by saying he did not write them all. Writing is not the crime. The crime is swearing that they are true when they are not true. It does not make any difference who wrote it. For instance, you swear to an affidavit, and you afterwards say, "I did not write it." "Did you know the contents?" "Yes." "Did you swear to it?" "Yes." What difference does it make who wrote it? And yet he endeavors to get behind that breastwork

and say, "I did not write all that affidavit; I only wrote part of it." What I wrote was true, but what I swore to was not." That will not do.

So the affidavit of July, 1882, he now swears was a lie. But he gives a reason for writing that, that you know is utterly, perfectly, completely false. You know that Dorsey never threatened to have him arrested for perjury because he had sworn in favor of Dorsey. You know it, and all the eloquence and all the genius of the world could not convince you that at that time Rerdell was afraid that Dorsey would have him arrested for perjury. No, sir.

Now, let us take the next step. Mr. Rerdell testified, on page 2275, that this letter (32 X) was received by him in due course of mail in 1878. Upon being asked whether he did not know that S. W. Dorsey was here in Washington at that time, he replied that he knew he was not. I will read it to you, gentlemen:

Chico Springs, P. O.

MOUNTAIN SPRING RANCH, COLFAX COUNTY, NEW MEXICO,
"*April* 3, 1878.

M. C. RERDELL, 1121 *I Street:*

"DEAR RERDELL: I wish you would get fullest information in regard to all the new post-office lettings and keep posted as to the schemes going on in the department. There are certain routes we want advertised and others we do not. I shall be in Washington as soon as the 12th unless something unexpectedly happens

Faithfully,

DORSEY.

Q. What Dorsey was that?—A. That is S. W. Dorsey's handwriting.
Q. And signature?—A. Yes, sir.

There is where he first speaks of it. At the time that letter was introduced, or in a little time, gentlemen, they also introduced the envelope. I do not know that I should have suspected the letter if they had not introduced the envelope. Whenever there is an effort to make a thing too certain I always suspect it. When that Morey letter was gotten up, what made me suspect it was that they had the

envelope, and I said to myself, "Why did they want the envelope if it was clearly in the handwriting of Garfield? What difference did it make whether it was sent to Morey or to somebody else? What difference did it make when it came from Washington?" The only question was, "Did Garfield write it?" And upon that subject the envelope threw no light. When a man feels weak and thinks that other people will know what he does not want them to know, then it is that he wants to barricade and strengthen before the attack. So they got up this envelope, and when I looked at that it did not look to me as if that stamp had been through the mail. I noticed the handwriting of "Chico Springs, N. M.," and then I noticed the 3 or the B on the postage stamp, and then I knew that the man who wrote "Chico Springs" never made the letter or figure on that stamp. It is utterly impossible for the man who wrote that "Chico Springs" to make that mark on the stamp. This stamp looked awfully clean, and I said, "Well, I wouldn't wonder if that was an envelope used here in the city which has been got through the mail in some way." They had it stamped on the back and I said, "Perhaps that was written in 1879." No. You see, if it was not written in 1879 it did not do any harm, because in 1879 Dorsey was not a member of the Senate. Having gone out on the 4th of March, 1879, if that letter was dated in April, 1879, why then there was no harm in his writing to Mr. Rerdell and telling him to look after the mail business. But if it was written on the 3d of April, 1878, it went far to show that Dorsey was personally interested at that time in mail routes. You will notice the printed date, April 3, 1878. They introduced that letter. I noticed that that envelope was a funny looking thing, and that the writing on it did not correspond with the mark on the stamp. I noticed also that upon the back they had the stamp. I do not know how they got it. When the Post-

Office Department has possession of a paper they can put almost anything on it.

When I said to Mr. Rerdell on cross-examination, not knowing anything about the letter, "Was that not written in 1879?" he said, "No, sir." Said I, "Don't you know as a matter of fact, that Dorsey was not here on the 3d of April, 1879?" He said, "As a matter of fact I know that he was here on the 3d of April, 1879." "Don't you know, as a matter of fact, that he was here on the 3d of April, 1878?" He says, "I know as a matter of fact that he was not here on the 3d of April, 1878; he was at Chico Springs." He knew as a matter of fact that he was here in 1879, and he swore that so as to preclude the possibility of his having written the letter in 1879. And he swore to the positive fact that he was not here on the 3d of April, 1878, so as to show that he wrote him that letter from Chico Springs. They wanted some letter from Dorsey in 1878, to show that he was personally interested in these routes while in the Senate. They submitted that letter to Mr. Boone, who was their witness. He looks at it and he tells you that Dorsey did not write that letter. A clear forgery. Whom else do they bring now? They leave it right there, and by that admit that Rerdell forged that letter. Mr. Boone, their witness, swears it. Nobody swears to the contrary except Rerdell. Boone threw the letter from him contemptuously, and said, "That is not Dorsey's handwriting," and they dare not bring another witness. The country is filled with experts, gentlemen, who know about handwriting; the United States had plenty of men and plenty of money, and they never brought a solitary man.

Now, gentlemen, do you want to know how this fellow got caught? I will tell you. There is the letter, and they dare not put a man on the stand to swear that it is in Dorsey's handwriting. Look at all over. But I want to tell you how Rerdell got caught about Dorsey being present on

the 3d of April, 1878, and I might as well tell you how I found it out. I do not want to pretend to be any more ingenious than I am. I found it out because I made the same mistake myself. I stumbled on that same root. I hit my toe of heedlessness on the same obstruction. I went up to look at the Senate journal. I opened a book to see whether Dorsey was here on the 3d of April, 1878. You see at the bottom there of the title page, Mr. Foreman—

Washington: Government Printing Office. 1877.

You know I was not looking for the book of 1877, so I shut that book up. I then took the next book and opened it, and it said at just the same place:

Washington: Government Printing Office. 1878.

I thought it was the book. So I looked over here, and I found that there was no session of the Senate in April, and I said to myself, "Is that possible that there was no session in April, 1878? Why, there must have been." But the book said "no." I looked back here, and it still said 1878. Then I happened to look back to this book that said 1877, and it said that the session commenced December 3d, 1877, and consequently April 3d, would be found in the book marked 1877 on the title page. So I turned right over here and looked up at the top and saw the date, April 3d, 1878. He was looking for the 1878 book, and that included April, 1879, and when he got to April, 1879, there was no session of the Senate. So he came right in here and swore that Dorsey was not here in 1878, but that he was here in April, 1879. I looked in that book and found that Mr. Dorsey, on the 3d of April, 1878, was appointed by the Vice-President on a committee of conferees, on the part of the Senate, together with Senators Windom and Beck, and I saw exactly how Mr. Rerdell made his mistake. He opened the book, and at the bottom of the title page it said 1877. That was not what he was looking for. He was looking for 1878. And the book that said 1878 showed that

in April the Senate was not in session. The book that said 1877 showed that in April the Senate was in session on April 3d, 1878. That man thought he was backed by the records of the Senate, and thereupon he manufactured that letter. And that is the letter sworn by Boone not to be in the handwriting of S. W. Dorsey. Now, gentlemen, there is nothing in this world that a man would be prevented from doing, for its baseness, who would do that.

There is more evidence than this. I asked Mr. Rerdell, "When you got that letter did you understand it?" He said, "No." "Did you do anything on account of it?" "No." "Did you know what it meant?" "No." And yet he has the temerity to swear that he received that on the 3d of April, 1878.

How did he come to spell the name Reddell? I will tell you. On page 2275 he had a letter to go by. That is the very page on which the Government puts in that letter. This letter is a letter of introduction. When Rerdell manufactured that letter he had this letter of introduction to go by:

Hon. J. L. ROUTT, *Denver:*

MY DEAR GOVERNOR: I wish to introduce my friend, Mr. M. C. Reddell.

It was written Reddell in that letter, and when this man wanted to manufacture one he had one in his possession that Dorsey wrote about that time (April 14, 1879), and he noticed that in that he spelled the name Reddell. So when he wanted to get up a fraud he spelled the name Reddell. That is the way. There is no pretence that Dorsey wrote that letter, and they dare not bring an expert or another man on earth acquainted with the handwriting of Dorsey and submit it to him and expect him to say that that is the handwriting of S. W. Dorsey. So much for that.

Now, it is claimed that while Torrey was writing up Dorsey's books, having in his possession the check stubs, he

was uncertain as to whether a charge was twenty-five dollars or twenty-five cents, and he thereupon sent to Rerdell to ascertain the true state of the account, so that he might open his books. Thereupon Rerdell made the calculation in the evidence marked (94 X,) and Donnelly wrote under it that it was right. Donnelly made that little certificate at the bottom. Here is the important paper [submitting 94 X to the jury], another piece manufactured out of whole cloth, not whole paper. Now, I ask a few questions about this. In the first place, they knew that unless this was corroborated it was good for nothing, and we find on it:

Lewis Johnson & Co., note due 28th October, three thousand dollars.

Was that note at Lewis Johnson & Co.'s? Why did they not bring some of the officers of that bank, if there was such a note for three thousand dollars there? But no one was brought. And yet they knew that everything coming from Rerdell must be corroborated.

If Rerdell had come to Donnelly to find what the account was, how did it happen to be in Rerdell's handwriting before it got to Donnelly? Donnelly wrote this certificate at the bottom. Rerdell had written all the facts before. If he went to Donnelly to get the facts, how did Rerdell happen to write this before it got to Donnelly? It is like me wanting to get some information from a man, and writing the information before going to him.

Now, if Donnelly wrote that after Rerdell had written, where did Rerdell get the information? If Donnelly had the books, Donnelly should have given the information. If Rerdell had the books, why did he want to go to Donnelly for information? And if Donnelly had the books, how did Rerdell write the information before he went to Donnelly? Then if he wanted that information for Torrey, why did he not send it to him? How does it happen that Rerdell wrote out the information for Donnelly, then got Donnelly

to certify it, because Torrey had asked it? And then how does it happen that Rerdell kept it? It seems to me that that ought to have been sent to Torrey. Torrey wrote to Rerdell for information; Rerdell wrote it all down, and then got Mr. Donnelly to say it was so. If Donnelly had the books, Donnelly should have given the information. If Rerdell had the books, he did not have to go to Donnelly for information. That is another manufactured paper. As I say, how does it happen to be in the possession of Rerdell? They claim that it was for Torrey's benefit. I believe when Torrey was on the stand they asked him if there was not some dispute about thirty-five cents. Now they bring that here to show that there was a dispute about twenty-five cents. Was there any reason for supposing that it was twenty-five cents? No, except that it was in the dollar column, that is all. Of what use was Donnelly's statement after Rerdell had made the calculation? Nobody on earth can tell why that was given. Why did they not bring some of the books or clerks from Lewis Johnson & Co.'s Bank to show that there was a note there in October for three thousand dollars.

There is another little matter, a conversation between Rerdell and Brady. Rerdell said he had a conversation with Brady in which he told him about the Congressional committee; that he was summoned to bring his books. Brady was astonished that Dorsey would be "Damn fool enough to keep books," and suggested to have them copied. If this is true, Brady at that time made a confident of Rerdell. If it is true, Brady at that time admitted to Rerdell that he (Brady) was a conspirator; that he had conspired with Dorsey. And yet Brady says that he never had but three or four conversations, I believe, with this man, and Rerdell himself admits that he never had but four or five, and when he is pinned down on cross-examination he accounts for enough of these interviews, without

any interviews on the subject of the books, to exceed all that he ever had. Do you believe that he ever had any such conversation? Do you believe that Brady would make a confident of him? Do you believe that Brady would substantially admit in his presence that he had been bribed by Dorsey? I do not.

Now, in order that you may know what this man is, I want you to have an idea of his character. So we will come to the next point. Mr. Rerdell admits that he sat with the defendants during the early part of this trial; that he was willing to make a bargain with the Government; that he proposed to the Government that he would sit with his co-defendants, and would challenge from the jury the friends of the defendants. Did any man wearing the human form ever propose a more corrupt and infamous bargain? That proposition ought to have been written on the tanned hide of a Tewksbury pauper. He went to the Government and deliberately said, "Gentlemen, I am willing to make a bargain with you. I am willing to sit with my co-defendants, pretending to be their friend, and while so pretending I will challenge their friends from the jury. I will so arrange it that their enemies may be upon the panel." "And why do you say that, Mr. Rerdell?" "In order to show my good faith towards the Government." He made the first affidavit for friendship, the second for fear, and he made this proposition to show his good faith. There never was a meaner proposition made by a human being, under the circumstances, than that. He proposed to do it. Mr. Blackmar says that the proposition was rejected; but that does not affect Mr. Rerdell. He was willing to carry it out.

What more does he swear? He swears that he tried to carry it out. In other words, that although it had been rejected, that made no difference to him. Mr. Blackmar says they would not do it. Rerdell swears that he tried to; went right along and did his level best; and if the Court

had allowed him four challenges he would have challenged four friends of the defendants from the jury.

What more does he admit? That when the Court decided that all of us together only had four, he endeavored to challenge one. Why? Because he believed he was a friend of the defendants; because he believed he would be against the prosecution; and he wanted to get the friends of the defendants away. Why? To the end that the defendants might be tried by an enemy. That is what he was trying to accomplish.

Let us take another step. That proposition reveals the entire man; that takes his hide off; that takes his flesh all off; that leaves his heart bare, naked; you can see what he is made of, and it shows the workings of his spirit, the motions of his mind; and you see in there a den of vipers; you see entangled, knotted adders. And yet that man is put upon the stand stamped by the seal of the Department of Justice, and that department says to twelve men, "Here is a gentleman that you can believe; that gentleman proposes to sell out his co-defendants to us, but we would not buy; he is an honorable kind of gentleman, but we would not buy."

Mr. MERRICK. It should be interpolated there—if you will pardon me a moment—that the Government refused to accept Rerdell until he himself had pleaded guilty.

Mr. INGERSOLL. I understand that. I say now, Mr. Merrick, that I would not for anything in the world, on a subject of that kind, go the millionth part of an inch beyond the testimony. Although you and I have not been very cordial friends during this trial, and neither have I and Mr. Bliss, yet if I know myself I would not for anything in this world put a stain upon your reputation, or upon the reputation of either of you, by misstating a word of this testimony. I would not do it. I am incapable of it. I admit that the evidence is that the proposition was rejected, but I also

insist that the Government knew the proposition had been made, otherwise it could not have been rejected. And so I say that after this man had made that proposition, infamous enough to put a blush upon the cheek of total depravity, the Government put that witness upon the stand, sealed with the seal of the Department of Justice.

Now, we will go another step. He sat with us from day to day, gentlemen, as you know, went in and out with us, as one of the co-defendants. In the meantime—and there is a laughable side even to this infamy—he borrowed money from Vaile. He went to him as a co-defendant, as a friend, and said, "I want a hundred and forty dollars; I want to buy bread and meat to give me strength to swear you into the penitentiary." And Vaile gave him the money. Would you believe a man like that? You cannot think of a man low enough, you cannot think of a defendant vile enough to be convicted on such testimony.

Now, we will go another step. He wanted to make that bargain with Mr. Blackmar. Mr. Blackmar swears that he told Mr. Merrick of it, and that Mr. Merrick rejected it; would have nothing to do with it.

At that time Mr. Woodward had two affidavits of Rerdell in his possession—an affidavit of Rerdell, made in September, supplemented by another affidavit, I believe, of November, that he made in the city of Hartford, covering seventy pages. When Mr. Woodward saw Mr. Rerdell sitting with the defendants, pretending to go with them, he (Woodward) had those two affidavits of Rerdell in his pocket. Did the prosecution know that Rerdell had made the two affidavits? I do not say they did, gentlemen. I only go right to the line of the evidence; there I stop.

Another thing: Mr. Blackmar swears that they had a signal to look at the clock, and that night Rerdell would meet him at six or seven o'clock, I have forgotten the hour; but Mr. Blackmar could not sit in his room all the time waiting for

him, and so he gave him a certain signal, so that he would know he was to wait that night. Then what happened? Then Mr. Rerdell came to Mr. Blackmar and gave to him written reports. Of what? I do not know. He sat with the defendants; he gave to Mr. Blackmar written reports. What were they? I do not know. What did Mr. Blackmar do with them? He handed them to Colonel Bliss. What did he do with them? I do not know. Did he read them? I do not know. Did he know that they were in the handwriting of Mr. Rerdell? I do not know. That is for you.

Still another point:

Mr. Bliss, after this jury had been impanneled, stood before them while Rerdell was sitting with us as a defendant, and said:

The ranks of the defendants are closed up, and he—

Rerdell—

stands before you now as one of the defendants, whose testimony—

Meaning the confessions made to MacVeagh and to Postmaster-General James—

will be accepted by the Court and by you, &c.

The question arises, "Did Mr. Bliss know at that time that Mr. Woodward had in his pockets two affidavits made by Rerdell, one made in September and the other in November? Did he know at that time that Rerdell had given his papers over to Mr. Woodward? Did he know at that time that he had offered to challenge the friends of the defendants from the panel? And so knowing, did he give us to understand that Rerdell had passed from the influence of the Government and was now acting as one of the co-defendants? Is it possible that Mr. Bliss would furnish Rerdell with a mask behind which he could gather information from the defendants and sell it to the Government for immunity? Is it possible? Those were the circumstances. I do not say that he knew. I do not know.

Gentlemen, I do not believe that it is the duty of a Gov-

ernment to prosecute its citizens. I do not believe that it is the duty of a Government to spread a net for one of the people whom it should protect. I do not believe in the spy and informer system. I believe that every Government should exist for the purpose of doing justice as between man and man. The mission of a Government is to protect and preserve its citizens from violence and fraud. The real object of a Government is to enforce honest contracts, to protect the weak from the strong; not to combine against the one, not to offer rewards for treachery, not to show cold avarice in order that some citizen may have his liberty sworn away. The objects of a good Government are the sublimest of which the imagination can conceive. The means employed should be as pure as the ends are noble and sacred. The Government should represent the opinions, desires, and ideals of its greatest, its best, and its noblest citizens. Every act of the Government should be a flower springing from the very heart of honor. A Government should be incapable of deceit. The Department of Justice should blow from the scales even the dust of prejudice. Representing a supreme power, it should have the serenity and frankness of omnipotence. Subterfuge is a confession of weakness. Behind every pretence lurks cowardice. Our Government should be the incarnation of candor, of courage, and of conscience. That is my idea of a great and noble Government.

The next point to which I call your attention is the withdrawal of the plea of not guilty by Mr. Rerdell. You probably remember the occurrence. I will read to you what he said upon that occasion. I find it on page 2202:

After mature reflection and a full consideration of the whole subject, I have determined to abandon any further defence of myself in this case, and put myself at the mercy of the Court and the Government; and if desired to do so by the counsel for the Government, to testify to all my knowledge of any facts with reference to any of the defendants either against or for them, myself included. Therefore, I now in person ask leave to withdraw my plea of not guilty, heretofore interposed, and enter my plea of guilty, and in so doing put myself upon

the mercy of the Court. I feel this to be a duty I owe to myself, my family, and to truth. I have arrived at this fixed determination upon my own reflections and responsibilities, and without any previous consultation with my counsel, who, I believe, would not have advised me to this course, and whom I now relieve from all and any responsibility for the course I have adopted.

Now, gentlemen, is it not wonderful that if Mr. Rerdell was about to tell the truth as a witness in this case, he could not even withdraw his plea of not guilty without misstating the facts? Is it not wonderful that he felt called upon at that time to tell several falsehoods? He says that he took this step upon his own responsibility. He says that he did it without the advice of his counsel. He tells you that he believes if he had asked his counsel, his counsel would have been opposed to it. He says he is willing to be a witness for the Government if the Government desires it, leaving you to infer that at that time no arrangement had been made for him to be a witness; that it was all in the regions of uncertainty; that he had withdrawn into the recesses of his own mind, and consulting with himself and nobody else had made up his mind to throw himself upon the mercy of the Government and the Court, and took that step without even allowing his counsel to know what he was about to do.

But he speaks further on the subject. I read from page 2523. I was then examining him:

Q. How did you come to do it?—A. I finally made up my mind to what I would do. I talked it over the evening before with my counsel.

He so states under oath; and yet when he stood up before this Court and withdrew his plea of not guilty, he said he acted without the knowledge of his counsel—

I read this to show you that the statement he made to the Court at the time he withdrew his plea was absolutely false. What next? I will go on a little further. The same man Rerdell, after he had made up his mind to go over to the Government; after he had made up his mind to swear away, if it was within

his power, the liberty of S. W. Dorsey, admits, on page 2525, that he endeavored to get five thousand dollars from Mr. Dorsey.

On page 2589 Mr. Rerdell swears positively that he did not know that he was to be used as a witness for the Government until he was called in court to take the stand. Let us look at the evidence of Mr. Bliss on page 2590. I will read you what he said :

Mr. BLISS. Your Honor, we propose to show, in substance, that this witness, for reasons with which we have nothing to do, connected with his own views of his own safety, from an early period was desirous of being accepted by the Government as a witness; that the counsel in the case refused to communicate with him or to have anything to do with him until, in the presence of his own counsel, he was brought to Mr. Merrick's office, and there the whole thing was explained; and that then for the first time the Government accepted his willingness to be a witness ; and they did it under circumstances which held out to him no inducement and which involved no training or anything of the kind by anybody representing the prosecution.

Now, let us go to the next step. I want to be perfectly fair. On page 2591 Mr. Merrick asked Mr. Rerdell this question:

Q. When did you first learn that you would be put upon the stand after pleading guilty?—A. It was the day before my plea was made in court.

Yet when he rose to withdraw the plea he expressed his willingness to go upon the stand for the Government, leaving you to infer that no arrangement had been made, and he afterwards finally swore that he did not know that he was to be called until he was called.

These things, gentlemen, you must remember.

On page 2515 Rerdell swears that on the Sunday after he got out of jail he proposed to Mr. Lilley to have Lilley act for him, and authorized Lilley to say to the Government that if the Government would accept him he would go on the stand and rebut Vaile. He told him that he had in his possession a letter or two of Mr. Vaile's. Rerdell tells you that he made this proposition on the 16th or 17th of September, 1882,

which was after he made the affidavit of June, 1881. On the same page he said it was just after Vaile went off the stand. That is my recollection. In the last trial Vaile testified on the 4th of August, 1882. So about that time Rerdell, according to his testimony, went to Lilley and made a proposition to sell out then. When he made the affidavit of July 13, 1882, the trial was then in progress. The very next month, August, while the trial was still going on, that same man, having made the affidavit of July 13, 1882, went to his attorney, Mr. Lilley, and authorized him to say to the Government that Mr. Rerdell would take the stand to swear against Mr. Vaile. Remember another thing, gentlemen. The only thing he offered to do then to insure his own safety was to swear against Vaile. He did not offer to swear against Dorsey. He did not authorize Mr. Lilley to tell the Government about the pencil memorandum and the tabular statement and his letter to Bosler and Dorsey's letter to Bosler and the Chico letter. Not a word. He simply went and wanted to sell some letters he had that had been written by Vaile. Why did he make that offer? Because that was all he had.

On page 2517 he says that nothing was said about pardon, but he says that Lilley told him that he thought he could get him off. What does that mean? That means pardon. On page 2518 he swears that he saw Woodward in November in Hartford, and Woodward and he wrote out the statement, covering, I believe, about seventy pages of legal cap. Then Mr. Rerdell, on page 2519, swears that he never made an affidavit after that. Then he admits, on the same page, that the day before he came into court he met Mr. Woodward and made another affidavit. That was supplementary to the first. In the meantime he found some new papers. So we find, according to his testimony, these affidavits:

On page 2521 we find that he made an affidavit in June, 1881. Remember, gentlemen, that he swore to that affidavit three or four times.

He made another affidavit in July, 1882, and another in

September and November of the same year, and another in February, 1883. And yet he swears that he was not to have immunity.

Now, gentlemen, one point more about his plea of guilty. After having withdrawn his plea of not guilty, after rising in court and solemnly saying that he was guilty, and that he was guilty as charged in the indictment, which says that Rerdell conspired with Brady and Vaile and Miner and John W. Dorsey and S. W. Dorsey and Turner, that they all conspired, and that all the false affidavits and false petitions and false everything else mentioned in the indictment were made for the common benefit of all, then on page 2570 he solemnly swears that he never entered into any conspiracy or agreement with the defendants mentioned in the indictment or any of them for the purpose of defrauding the Government. When I asked him, With whom did you conspire, when did you conspire, and what was the conspiracy? he could not tell; and yet he had stood up in court and admitted that he was guilty, and then on oath denied it. Did he not swear himself that after the division was made in the routes Stephen W. Dorsey had not the interest of a cent in any route that went to Vaile or Miner? Did he not also swear that Vaile and Miner had not the interest of one cent in any route that went to Stephen W. Dorsey? Did he not swear that they were not mutually interested, and yet did he not stand up in court, and by a plea of guilty say that they were not only mutually interested, but he was one of the interested parties himself? It seems impossible for that man to tell the truth on any subject whatever. On page 2571 he swears he never made any agreement with Vaile to defraud the United States. He stood up in court and admitted that he had. He swore that he never made any agreement with John W. Dorsey. He admitted that he had. He swore that he never made any agreement with S. W. Dorsey, and yet stood up in court and admitted that he had.

Now let us see whether he expected immunity. He swears that he was taken to Mr. Merrick's office by Mr. Woodward

and his counsel. What Mr. Merrick told him we find on page 2590:

Q. And did I not say that, under the circumstances, the Government would have nothing to do with you unless you pleaded guilty?—A. You did.

Q. And that if you pleaded guilty you had nothing to trust to but the mercy of the Government and the Court?—A. That is what you did, sir, exactly.

Now, on page 2523:

Q. Was it not arranged that Mr. Woodward was to come to your house and then take you to one of the attorneys for the prosecution, for the purpose of arranging the terms and conditions upon which you were to take the stand?—A. It was not.

In another place he swears that it was, and that the arrangement was carried out.

The next point I wish to make, if the Court please, is that whenever what is called an accomplice or an informer turns what is called State's evidence, and whenever he is permitted by the court to be sworn as a witness in a case, there is then upon the part of the Government an implied promise that if he tells the truth he shall not be punished. I read from the Whiskey cases, 9 Otto, page 595. Mr. Justice Clifford delivers the opinion of the court.

Courts of justice everywhere agree that the established usage is that an accomplice duly admitted as a witness in a criminal prosecution against his associates in guilt, if he testifies fully and fairly, will not be prosecuted for the same offence, and some of the decided cases and standard text-writers give very satisfactory explanations of the origin and scope of the usage in its ordinary application in actual practice.

The COURT. What point are you now making to the Court?

Mr. INGERSOLL. I am making this point: It appears from the evidence that Mr. Wilshire, the attorney of Mr. Rerdell told him at the time he was making up his mind whether he would go to the Government or not, about the whiskey cases.

I make the point that when an accomplice turns State's evidence the State cannot prosecute him after that if he testi-

fies fully and fairly; that the usage is immemorial, and that there is not an exception in the records of all the cases in the books; consequently that when Mr. Merrick told him, "You must look simply to the Government and to the Court and you will have just exactly what the law gives you and no more," his remarks meant that the law gave him perfect immunity, provided he went upon the stand and swore truthfully.

The COURT. You have demonstrated, as far as you have been able to, that he has not sworn truthfully.

Mr. INGERSOLL. *He has not;* HE HAS NOT; and if the Government will act fairly with him he will get no immunity.

When he went to the Government he understood the law to be that if he swore fully and fairly, or if he swore in such a way that they could not prove that he did not swear fully and fairly, he was to have immunity. He understood that the more he swore against the defendants the better was his chance for immunity. He knew that the Government would never complain of any lie he swore against the defendants.

Now, the next question is what is the law of accomplices, of informers? There was a remark made by Mr. Bliss in his speech, that they had plenty of evidence in this case without the testimony of Mr. Walsh or Mr. Moore or Mr. Rerdell; plenty of evidence without the testimony of Mr. Rerdell. If that had been so then the Government had no right to put Mr. Rerdell on the stand. There is but one excuse for using the testimony of a man who pleads guilty, and that is that without his testimony a conviction cannot, in all probability, be obtained. And upon that point I refer to 10 Pickering, 478, and to 9 Cowen, 711; and not only upon that point, but upon the point I made at first, that whenever you put such a man upon the stand that of itself amounts to a promise of absolute immunity:

The object of admitting the evidence of accomplices is in order to effect the discovery and punishment of crimes *which cannot be proved* against the offenders without the aid of an accomplice's testi-

mony. In order to prevent this entire failure of justice recourse is had to the evidence of accomplices.—1 Phillips on Evidence, 107.

If, therefore, there be sufficient evidence to convict without his testimony, the court will refuse to admit him as a witness.—Roscoe's Criminal Evidence, 127.

Neither do I believe that Mr. Rerdell had a right to go upon the stand until his case was finally disposed of. Precisely the same language is used by Wharton on Criminal Evidence, 439:

An accomplice is used by the Government because his evidence is necessary to a conviction.

That is the opinion of Mr. Justice MacLean, in 4 MacLean's Circuit Court Reports, 103.

Mr. MERRICK. If not improper I may remark that all those cases refer to a condition of things prior to the trial in which the party appears as the witness.

Mr. INGERSOLL. The usual question is—and the court determines that question—whether a man shall be a witness or not.

The COURT. How can the court determine that without passing upon the evidence in the case? That is not the duty of the court; it belongs to the jury.

Mr. INGERSOLL. The prosecuting attorney has to pass upon that himself when he makes up his mind to put him upon the stand; and he only has the right to do that when he believes that no conviction can be had without that testimony.

The COURT. Then it belongs to the prosecuting attorney.

Mr. INGERSOLL. I go further than that, and say that the prosecuting attorney cannot do that without consultation with the court, and without saying to the court that he believes no conviction can be had without that testimony.

Mr. MERRICK. May I be allowed to suggest a point which probably you would like to comment upon—that all these cases refer to accomplices prior to the trial. My own opinion in reference to the case was that I would not put Rerdell upon the stand until he had pleaded guilty.

The COURT. I do not see the ground for the distinction between the cases. Undoubtedly, when an accomplice goes over to the Government and offers his testimony, he does it always in the hope of pardon or immunity from prosecution.

Mr. INGERSOLL. That is all I want at present. I want it understood, if the Court please, that I shall argue to the jury that at the time he made up his mind to go to the Government, he understood that that meant immunity.

The COURT. Oh, well, of course it did.

Mr. INGERSOLL. The next point is that the Court has to take all his story or none; and I read from the second volume of Starkie on Evidence, side-page 24:

> In judging of the credit due to the testimony of an accomplice, it seems to be a necessary principle that his testimony must be wholly received as that of a credible witness or wholly rejected. His evidence on points where he is confirmed by unimpeachable evidence is useless. The question is whether he is to be believed upon points where he received no confirmation. And of this the jury are to form their opinion from the nature of the testimony, his manner of delivering it, and the confirmation which it receives derived from other evidence which is unsuspected. If his character be established as a witness of truth, he is credible in matters where he is not corroborated. If, on the other hand, nothwithstanding the corroboration upon particular points, doubts and suspicions still remain as to his credit, his whole testimony becomes useless.

That is the point I want to make. If they are only to take his evidence where it is corroborated, they might as well have had the corroboration in the first place without him.

Now, gentlemen, the evidence, in my judgment, shows, and shows beyond a doubt—and I believe it is now admitted—that at the time Mr. Rerdell made up his mind to go to the Government he expected that he was to have absolute immunity. You must judge of his evidence in the light of that fact, in the light of that knowledge, in the light of what had been told him by his counsel. Now, it is for you

to say. You know something of this man. You have seen him from day to day. You saw his manner upon the stand. Why, they tell you that at one time he was overcome with emotion, and that that is evidence that he was telling the truth. It may be that there is left in that man some little spark of goodness still. When he was swearing, or endeavoring to swear, away the liberty of the man who had been his friend, may be at that time the memory of the past did for a moment rush upon him. He may have remembered the thousand acts of kindness; he may have remembered the years of liberality; he may have remembered the days that he had spent beneath that hospitable roof; he may have remembered the wife and children; he may have remembered all these things, and for just that moment he may have realized what a wretch he was. In no other way can you account for his having emotion.

But I am about through with that gentleman. I shall not take up your time in the remainder of my speech by commenting upon Mr. Rerdell. Let us finish his testimony now; let us put him out of sight; let us put him in his coffin, close the lid, nail it down:

First nail—affidavit of June 20, 1881; drive it in.

Second nail—the letter of July 5, 1882, when he says that affidavit of 1881 was made by the persuasion of Bosler; drive it in.

Third nail—affidavit of July 13, 1882, where he swears that they were all perfectly innocent.

Fourth nail—the pencil memorandum; drive that in.

Fifth nail—the tabular statement that gave thirty-three and one-third per cent. to Brady; drive it in.

Sixth nail—his pretended letter to Bosler telling about the advice of Brady; drive that in.

Seventh nail—the letter he pretends that Dorsey, on the 13th of May, 1879, wrote to Bosler, the copies being made by Miss White; drive that in.

Wind his corpse up in the balance-sheets from the red books made by Donnelly.

Then you want a plate for his coffin. Let us paste right on there the Chico letter, April 3, 1878.

Now, we want grave-stones. Let us take the red books, put one at his head and one at his feet.

And let his epitaph, written upon the red book placed at his head, be—

Up to this moment I have been faithful to every trust.

My prayer to Gabriel is, "When you pass over that grave don't blow." Let him sleep. There are, there never were, there never will be twelve honest men who will deprive any citizen of his liberty upon the evidence of a man like Mr. Rerdell. It never happened; it never will.

And now, gentlemen, it becomes my duty to answer a few points made by the gentlemen who have addressed you on behalf of the Government. The first gentleman who addressed you was Mr. Ker, and he had something to say—considerable to say—about what are known as the Clendenning bonds.

They claim, gentlemen, first, that an immense fraud was in view when these proposals—I think they are proposals—with accompanying bonds and oaths of sureties were sent to Mr. Clendenning. I wish to give you, in the first place, my explanation of this paper. See if I understand it. If you sent this paper to that officer or to that gentleman as a form to guide him in making up the bonds, you would only fill up that portion of the bond in giving him a sample which you wanted him to fill up, and you would fill it up in order to show him exactly how he was to fill it up; and you would leave out that part which was already filled up in the bond. That is exactly what was done in this case. There was not one of those bonds that had an oath of the surety or the names of the sureties, because they were unknown. The names were unknown, and the amounts that the post-

master would certify to, and so all that was left in blank in the bond sent. But this being only a sample, it was sent to him so that he might know how to fill up the bonds that were sent. Consequently that portion which was absolutely blank in the bond sent would be filled up as a guide to him, and that portion which was filled up in the bonds sent would be left blank in the guide, because he had nothing to do with that part. Now, that is all there is to it.

What was left out, as they claim? Why they claim that the name of the bidder was left out and the amount of the bid. It makes no difference. That is not the slightest evidence of fraud, is it?

What was the next thing? They were never used, never. No bond included in that bundle was ever accepted by the Government. No bonds were ever made, no contract ever based upon them, not a solitary cent taken from the Government by those papers. Why, then, this secrecy? Because when a man is in this business he does not want anybody else to know that he is bidding, in the first place; and, in the second place, he does not want anybody to know the amount of the bid. If the amount of the bid is put in, then the persons going security will know it, and they may tell. The postmaster who approves the security will know it, and he may tell. The object of the secrecy is not to defraud the Government, but to prevent other people finding the amount of the bid and then underbidding. That is the object, and it is the only object. And yet this little, poor, dried-up bond, soaked in the water of suspicion, swells almost to bursting in the minds of the counsel for the prosecution. There is nothing of it. It was never worthy of mention, in the first place. You will never think of it when you retire. It will never enter your minds; but if it does, remember that the object of the secrecy was simply as a precaution against other bidders, and had nothing whatever to do with the Government.

There is one other point. I believe Mr. Dorsey did say, in his examination-in-chief, that he did not talk to anybody about

it, and it afterwards occurred that he did go and ask Mr. Edmunds whether what he had asked Clendenning to do was illegal or improper. To that contradiction you are welcome.

Mr. Ker gives the date of Boone's circular to postmasters asking for information, and says it was dated December 1, 1879. Thereupon Mr. Merrick corrects him, and says it was in 1878. The Court does the same. As a matter of fact, these circulars were dated December, 1877. Gentlemen, I just simply speak of this to show how easy it is for people to be mistaken. Those circulars were gotten up for the purpose of getting information before bidding. All the bids were put in in February, 1878. The circulars were sent out, I believe, in November and December, 1877. And yet upon that one point Mr. Ker is mistaken two years.

On page 4512 Mr. Ker states that Miner, in April, 1878, said to Moore that it all depended upon affidavits of the contractors, and that "they were all good affidavit men." The object of this, if it had an object, was to show that this conspiracy was entered into with Moore, and that S. W. Dorsey was a part of it in April, 1878. The evidence of Moore is that the conversation took place, not in April, but in July, 1878, at the city of Denver. And yet Mr. Ker tells you that it was in April, 1878. It is not, perhaps, a very material point, but it simply serves to show you the manner in which this evidence is repeated to you by the counsel for the prosecution.

At page 4537 Mr. Ker says that before J. W. Dorsey went West he made an arrangement with his brother to sell out his interest for ten thousand dollars; that he did this before he started West; that he did it before there was any service put on; and that these contracts were taken at such low figures; yet John W. Dorsey had raised his interest up to ten thousand dollars. Mr. Ker tells you that the evidence shows that before any service was put on and before John W. Dorsey went West he tried to sell out his interest for ten thousand dollars. Now, what was the object in making this statement, unless it was pure forgetfulness? Why it was to connect Vaile with this business some time in April, 1878.

On pages 4100 and 4102 J. W. Dorsey swears that he was here in Washington in November, 1878; before that time he had gone to the Tongue River route; he had come back from Bismarck; and it was then, not in April; it was then, not before he went West; it was then, not before any service was put on, that he talked with Vaile about selling out to him for ten thousand dollars; and it was in November that he left the instructions for his brother to sell to Vaile. It was not in April; it was not before he went West; it was not before any service was put on.

At page 4540 Mr. Ker states that—

> Dorsey held thirty-three routes, and there was not one of them, I suppose, that was not expedited to the fullest extent.

What evidence is there of that? Is there any evidence that any route of Dorsey's was expedited not mentioned in this indictment?

Did not Mr. Ker know whether the routes had been expedited or not? Did not I offer in this court to prove what was done with every solitary route we had? I say to the gentleman that the other routes were not expedited. I say to the gentleman that only two other routes were, and we were not interested in them. And I say also that they know the record, and they knew the record when this statement was made; but they may have forgotten it. But is it fair, gentlemen, for a prosecuting officer to state to you that he supposed all the routes of Dorsey were expedited? One of those in the indictment was not expedited; and not a route outside of the indictment belonging to Dorsey, in which he had an interest, was expedited. So much for that statement.

At page 4546 you are told by Mr. Ker that—

> Nobody ever heard of expedition on a route before.

We proved what form of contracts had been in the Post-Office Department for twenty years, and proved that in every one of them there was a clause for expedition. So much for that evidence, gentlemen.

At page 4546 Mr. Ker tells us that J. W. Dorsey testified—

That the routes were taken so low as to cut out other people, but that they knew they were to be expedited, and they knew they were to be increased.

J. W. Dorsey testified upon that subject, and his testimony will be found at page 4085 :

Q. Did you have an arrangement by which you should bid an extremely small amount on the routes, with the further understanding that the service was to be increased and expedited?—A. No, sir; I never thought of such a thing.

And in his entire testimony in chief and cross, I believe there is not another question on that subject.

On page 4549, referring to the letter of John M. Peck, which was in fact written by Miner, Mr. Ker says :

Cedarville ought to have had as many mails as the other points between, according to the order, but they were going to supply it only once a week.

As a matter of fact, gentlemen, this letter was written on the 22d of October, 1878, and at the time the letter was written the mail, according to the contract, was carried only once a week on that route, and consequently Cedarville would have had exactly the same mail as any other point; that is to say, once a week.

Page 556 of the record shows that three trips a week were put upon this route to Loup City with a schedule of thirteen hours, but not until the 10th of July, 1879, nine months after this letter was written.

On page 4609 Mr. Ker, in commenting upon an affidavit on the Toquerville and Adairville route, reads from the evidence of John W. Dorsey, citing page 3945, and ends at this question and answer :

Q. It was done so entirely, was it not?—A. It ought to have been so.

Now, let me read you the balance :

Q. Was it not so done?—A. No, sir.
Q. It was not?—A. No, sir.
Q For whose benefit was it done?—A. He—

Meaning Rerdell—

stole five thousand dollars on that route, or very nearly that—four thousand nine hundred dollars on that very route.

Q. When did he steal that five thousand dollars?—A. About a year ago or a year and a half; I do not remember the time.

Q. From whom?—A. From Mr. Bosler and myself.

Q. At what time?—A. I should think in February, 1882.

The question now arises, did Mr. Rerdell take this money as charged? Read now from the record, at pages 734 and 735, and you will find in the last line of the tabular statement introduced in this case that on this very route four thousand eight hundred and twenty-seven dollars and eighty-three cents was paid to M. C. Rerdell as subcontractor on that route. We also find that it was paid on the 4th of February, 1882. This is the money that Dorsey swears Rerdell stole, and that gentleman never took the stand to deny it.

At page 4616, Mr. Ker, after going over all the evidence with regard to the affidavits as to the impossibility of the number of men and horses doing the service rendered necessary by the affidavit, comes to the following conclusion: That under the oath the proportion was, as nine to twenty-three; that under the oath of Johnson the real proportion should have been, and was, eight to twenty-two.

In other words, the real proportion, according to Mr. Ker's own statement, would have taken more money from the Treasury than the wrong proportion made under the fraudulent affidavit, and that was nine to twenty-three. Nine into twenty-three goes twice and five-ninths; that is, two hundred and fifty-five per cent. and a fraction. That is the fraudulent proportion. Mr. Ker says that the real proportion was not as nine into twenty-three, but as eight to twenty-two. Eight into twenty-two goes twice and six-eighths; that is to say, two and three-quarters; that is to say, two hundred and seventy-five per cent. The fraudulent proportion, according to his claim, only gave us two hundred and fifty-five per cent. The real proportion, which Mr. Ker admits was right, according to the evidence of Johnson, would have given us two hundred and seventy-five per cent. In other words, we got

twenty per cent. less under the fraud than we would under the evidence of Johnson that Mr. Ker admits to be correct. Finding that it is twenty per cent. less under the fraudulent affidavit than under Johnson's estimate, he shouts fraud.

On page 4617 Mr. Ker tells us that Sanderson "had no more to do with the route than you or I had." On page 731 I find that Mr. Sanderson drew all the money on the route from Saguache to Lake City, I believe, with one exception—the third quarter of one year—1878, it may be. He drew every dollar upon that route, anyhow, up to February 17, 1882, except for one quarter. And yet Mr. Ker stood up before you and said that Sanderson "had no more to do with the route than you or I had."

Let us see if we have any more evidence. I find on page 3271 a subcontract executed on route 38150, from Saguache to Lake City, by Miner, Peck & Company to Sanderson for the whole time until June 30, 1882. I find that subcontract is signed by John R. Miner and J. L. Sanderson. This contract was to be from the 1st of July, 1878, and was made the 15th of May, 1878, and here it is in evidence. The evidence is that the contract was made between Miner, Peck & Company and Sanderson; the evidence also is that Sanderson drew the pay. And yet Mr. Ker stands up before you and says that Sanderson "had no more to do with the route than you or I had."

The subcontract, gentlemen, states that Sanderson is to have the entire pay, and it was before the contract term began. So much for that.

Mr. KER. When was it filed?

Mr. WILSON. That does not make any difference.

Mr. INGERSOLL. "When was it filed?" There was a trial in my town of a suit against the city, I believe, for allowing a culvert to get filled up and flood a man's cellar. They brought in evidence to prove, don't you see, that the culvert was not filled up, and one witness swore that the day before the rain he saw a dog go through there. One of the jurors got up and

said that he would like to ask a question; he said, "What was the color of that dog?"

On page 4631 Mr. Ker states that during the investigation by Congress—

> Contractors got out printed letters and sent them to every subcontractor upon every star route in the country, asking them to write to their members of Congress urging their members of Congress to vote for this appropriation.

On page 1346 is Rerdell's letter upon this very route, in which not one word is said about the contractor doing anything one way or the other. There is no evidence that any other letter was written on that route. I call your attention to it to show how the prosecution strained every possible point, and how they endeavored to patch and piece and putty and veneer this evidence. Mr. Miner wrote a letter (page 669). I do not remember any other evidence upon this subject. And certainly it would be impossible to write a milder letter than Mr. Miner wrote. He did not ask the people to get up petitions against reduction, or ask for more service. Here is what he says, and I will read you Mr. Miner's letter:

> It will be well for the people of your section to send to the member of Congress from your district such petitions as will express their opinions on the subject of this reduction.
>
> Truly, yours,
>
> JNO. R. MINER, *Ag't.*

Could you write a milder letter than that, to save your life, and refer to the subject? Could you write a fairer letter than that, to save your life?

He does not say, "Get up petitions against it." He does not say, "Send those petitions to your member of Congress and tell him to do what he can to prevent it." Not one word of that kind.

Yet that is considered as evidence of fraud; that is considered as evidence of conspiracy.

The next point made is that Mr. Ker states, at page 4632, that Brady endeavored to bribe the members of Congress into making this appropriation by doubling every star route in the

Southern and Middle States, and did so during the Congressional investigation. What are the facts? The deficiency bill passed April 7, 1880. That appropriated money only for the purpose of carrying the mails up to June 30, 1880. The regular appropriation bill was passed at the same session, and appropriated money to carry the mails from the 1st of July, 1880. Now let us see if Brady doubled the trips in these Southern and Middle States during that investigation. On page 3393 Brady says:

> Practically on July 1, 1880, we doubled up the entire service for all the Southern and Middle States.
>
> This was after the deficiency bill had passed; it was after the money appropriated by that bill had been expended; and it was paid for out of the regular appropriation for the Post-Office Department.

Yet that was a bribe. It just shows that Congress by the regular appropriation indorsed the policy of Mr. Key to have a daily mail to every place where there was a county-seat.

At page 4652, on the route from Mineral Park to Pioche, there were two petitions, marked 17 K and 18 K. It is somewhat singular that the Government brought no persons whose names are on these petitions to show that they had not authorized their names to be signed thereto, but they brought persons to show that the signatures were not genuine.

On page 1621 the witness Wright swears that the names are the same on both petitions. He is then asked if he knows the signatures of any other people, and he says "Yes." He then says that the signature of John Deland is not genuine. He swears that he knows nearly every one of the people. He is then asked whether these signatures are in the handwriting of the people, and he replies that he thinks not. Then he is asked as to the signature of Cornell, and he says:

> That is not in his handwriting.

Here is his cross-examination, gentlemen: * * *

I asked him, "Do you know these people;" made him swear that he knew Mr. Street; that he knew the signatures of many; that he knew these people. I proved where they were

living ; that they are living in the country now, good, respectable, honest people. And yet the Government did not bring one man whose name had been written here to prove that he had not authorized it. Why? Because they could not. They knew by the testimony here that the petitions were absolutely and perfectly honest. And it is in that way that they seek to deprive men of their liberty. They did not call a man whose name appeared on those petitions to say that his signature was not genuine or not authorized. I proved that many of them are still living and first-rate men.

Now, gentlemen, you remember besides that, that Mr. H. S. Stevens, the delegate from that Territory, recommended the same thing asked for by those petitions (pages 1635, 1636), where it was admitted by counsel for the Government that the letters of Stevens were genuine. It is upon that same route that General Fremont also wrote a letter (page 1636). And I will show you that the names are exactly or substantially the same on 18 K as those found at pages 1638 and 1639.

Mr. Ker and Mr. Bliss both endeavored to show that there were no petitions on this route, and that it was simply done on a letter. If you will look at page 1603 you will find the evidence of Mr. Krider, who was postmaster at Mineral Park, in which he says there were petitions.

In order to show that there was a conspiracy between these parties, or between Dorsey and Vaile, or Dorsey, Rerdell, and Vaile, Mr. Ker called the attention of the jury to two letters, one written by Rerdell to the Sixth Auditor, and one written by Vaile. Here is a letter dated the 21st of August, 1880. It is introduced, of course, to show that there was a conspiracy at that time between Mr. Vaile and Mr. Dorsey. It was written by Mr. Rerdell to the Sixth Auditor :

To the Sixth Auditor :

Sir : H. M. Vaile was subcontractor on route 40104 during the first quarter of 1879. In the first settlement for that quarter Vaile was paid for certain expedited service—it was subsequently discovered that the expedition thus paid for was never performed—the department

therefore, and very properly, too, charged back to the route the amount thus paid for expedition never performed, viz, some two thousand eight hundred dollars.

Meanwhile Vaile, who alone was in fault, had ceased to have any connection with the route—the charging back, therefore, fell on the wrong man, the man who was in no way responsible for the non-performance of the expedition, except so far as he stood between the department and the subcontractor.

It is true that this payment was made by the regular contractor to the subcontractor, but it is equally true that it was, in a measure, a compulsory payment. By the rules of the Post-Office Department it is made obligatory on the regular contractor to pay the subcontractor before the department will settle with him—it is not, therefore, a payment as between two individuals. The receipt is on the form prescribed by the Post-Office Department, and is witnessed by (the then) Postmaster Edmunds, as the rules prescribe. It is on file in the Post-Office Department, and I maintain that our covenants were fulfilled when we put the receipt on file. If Vaile had performed the service as he agreed he would do, and for doing which he received this money, we should have been reimbursed by a *certificate of service* from the contract office. *Now, will you permit Vaile to take advantage of his own wrong, and thus enable him to defraud another man out of his money?*

I refrain from discussing the question as to what would be the duty of the department if Vaile, who had received the money wrongfully, had ceased to have any connection with the department, because it is not pertinent to this issue; if it were, I could cite you to many authorities and precedents to the effect that even then it would be your duty to refund the money to me. But this is not necessary, because Vaile is still doing business with the department.

He is subcontractor on route 44156 for the full contract pay, which is twenty-two thousand dollars per annum, hence the department will have no difficulty in reimbursing itself for what was, in simple truth, an overpayment.

I think you will agree with me when I ask that this money be refunded to the subcontractor on route 40104 and charged to route 44156, because it is simply correcting an error. You have the same authority to charge it to one as you have to charge it to the other, and you have already charged it to me.

The law-merchant would experience no difficulty in adjusting a matter of this sort. The merchant who would refuse to correct an error of this character would be justly called a lame duck, and would be scouted from "'Change." Vaile was erroneously paid for the performance of a service which he never did perform. Therefore I

ask that he be compelled to render unto Cæsar the things that he ceasers.

Respectfully,

M. C. RERDELL.

*Acting for himself and for the regular contractor on route* 40104.

That is to show also, gentlemen, that there was a conspiracy between Vaile and Rerdell. Now, Mr. Vaile wrote a letter also to the same man. I will read it :

WASHINGTON, D. C., *July* 9, 1880.

Hon. J. McGREW :

SIR : In reply to yours of July 8th, relating to the Jennings case, I would state that I did not receive the money in manner and form as stated by one M. C. Rerdell, nor was the draft of J. W. Dorsey, on said route 40104, for the quarter named, to get an advance of money for myself or for my own use.

At the time I receipted for my pay as subcontractor on said route I did not, in fact, receive any money, but did so receipt that J. W. Dorsey might negotiate his draft on said route, and for no other purpose.

Although I was subcontractor of record on said route at the time named, I was not a subcontractor in my own behalf, but as trustee for J. W. Dorsey, S. W. Dorsey, Isaac Jennings, and others, to collect said money and pay it over as said parties should direct. I further state that all money that ever came into my hands from said route I did pay over to the parties named as trustee, as by them directed.

Acting as trustee of said Jennings, and believing that he had performed the mail service on said route as by him agreed, and in accordance with the laws and regulations of the Post-Office Department, I did pay said Jennings, on the 1st day of April, 1879, the sum of $1,257.73, the sum of money he was entitled to provided he had carried the mail three days per week on the schedule required, which I fully believed at that time he had done, and for a long time after.

I further state that I am informed that said Jennings is not responsible; that it would be utterly impossible for me to receive back the $2,800, or any part thereof; that in fact this sum of money sought to be collected of me, if collected for said Jennings's benefit, or go into his hands in addition to the sum he now has unlawfully, doubly remunerating him for his neglect of duty.

I further state that all the money collected on said route not paid to said Jennings was paid to liquidate the debts of J. W. Dorsey, S. W. Dorsey, and others previously contracted, and not one dollar ever remained in my hands.

I further state I believe both J. W. Dorsey and S. W. Dorsey are

irresponsible, and it would be impossible for me to collect any part of said money from them. As above stated, said money came into my hand only as their agent or trustee, and at once paid out as they directed; that my subcontract was put on file simply to enable J. W. Dorsey to negotiate his draft on said route, when in fact said Jennings was the real subcontractor. Said Jennings agreed to perform the service on said route strictly in accordance with the laws and regulations of the department, for the annual sum of $12,600.00, the duplicate of which contract was delivered over to S. W. Dorsey by myself, and which I believe is now in the hands of M. C. Rerdell, and which, or a copy thereof, I demand shall be filed with you in this case, that you may see what said Jennings agreed to do.

This is certainly a strange claim. Jennings agreed to perform mail service on said route. I believed he had done it, and paid him accordingly. It turns out long after he did not properly perform the service, but was attempting a swindle, and a deduction is ordered for not performing the service properly. Then this man, the guilty party, having got money from me, as trustee, wrongfully, as well as from the Government, and asks that the Auditor compel me to pay him the sum of $2,800.00, when, as I am informed, he is seeking to get this same deduction remitted.

Surely if he succeeded in all this he will make a good thing out of his rascality and I a good victim without remedy. I state again I did not hypothecate said draft for myself, did not receive one cent as subcontractor, but became the payee of said draft that said J. W. Dorsey might negotiate it, and I to dispose of the proceeds as he should direct, all of which I did. Therefore I request you not to compel me to pay the sum of money asked, but if I am liable at all let the parties seek their redress at law, where all the facts can be obtained and justice rendered me. And it is also well known that I am a man of means, and any judgment rendered against me could and would be collected, dollar for dollar.

I am, very respectfully,

H. M. VAILE.

That was introduced to show that at the time Vaile was in a conspiracy with S. W. Dorsey. Why did they introduce it? Simply for one line in it in which he says he was acting as the trustee of S. W. Dorsey. *He was.* How? Dorsey had advanced money. The routes were liable, and the persons who held the routes had agreed to refund it. The subcontracts were made to Vaile, and Vaile agreed out of the proceeds of the route to pay the debt to S. W. Dorsey. To

that extent he was the trustee of S. W. Dorsey. Dorsey swears it. Vaile admits it, and we all claim it to be true. And yet they introduced that letter simply because that line was there. Now, gentlemen, I have read both of those letters, and I want you to remember them if you can, and tell me whether at that time Vaile and Dorsey were in a conspiracy together to defraud this Government. And yet the Government introduced this letter just to prove that one thing, and no more.

On the Julian and Colton route there is this peculiarity : The Government failed to prove the number of men and horses necessary on the original schedule for three-times-a week service, and consequently we are left without any standard by which to judge ; without any standard by which to measure.

On page 4685 Mr. Ker calls attention to the fact that the proposal marked 6 P, originally contained an offer to carry the mail at thirty-six hours for seven thousand seven hundred and twenty-two dollars additional, but he states that the thirty-six was rubbed out and twenty-six was put in its place.

That is, they offered to carry it in thirty-six hours for seven thousand and odd dollars, and then afterwards fraudulently, of course, rubbed out the thirty-six and inserted twenty-six. But they did not change the sum for which they offered to carry it. They offered to carry it in thirty-six hours for seven thousand seven hundred and twenty-two dollars, and afterwards they rubbed out the thirty-six and put in twenty-six, and then offered to carry it in twenty-six hours for seven thousand seven hundred and twenty-two dollars. The question arises, how did that hurt the Government? The question arises, was that a fraud? If it had been originally twenty-six hours and they had rubbed out those figures and put in thirty-six hours, then you might say the intention was to defraud the Government. But the proposition had to be accepted after that was done, and consequently in no event could the Government be defrauded by the change of the proposal before the Government accepted the proposal. I might say to a man, "I will

let you have a house and lot for ten thousand dollars." He does not accept the proposal. Have I not the right on the next day to charge him twelve thousand dollars for it? Is that a fraud? If I tell him, "You may have it for ten thousand dollars," and he accepts, then, as an honorable man, I cannot change the proposal. But if I tell him he may have it for twelve thousand dollars and then afterwards tell him he may have it for ten thousand dollars, Mr. Ker calls that a fraud of two thousand dollars. If one of the jury should give me a contract to deliver one hundred horses for ten thousand dollars, and I should scratch out the one hundred and put in seventy-five, certainly you would not consider yourself defrauded. Or if I agreed to carry the mail in thirty hours for the Government for seven thousand seven hundred and twenty-two dollars, and then afterwards changed and said I would carry it in ten hours less time for the same price, can that be tortured into a fraud—unless I might be indicted for defrauding myself?

On page 4569 Mr. Ker says that Mr. Farrish, who was the subcontractor says:

> I always carried the mail in from six to ten hours before expedition. I carried the mail from Greenhorn to Pueblo. I did not stop at Saint Charles.

On page 835 Mr. Farrish says he carried the mail for three months in 1881. That is the only time Farrish carried the mail. This route was expedited on the 26th day of June, 1879, and yet Mr. Ker says that Farrish carried the mail before it was expedited and carried it in from six to ten hours. Mr. Farrish did not carry the mail until about two years after it had been expedited.

On page 4768 Mr. Ker, speaking of the two affidavits on the route from Pueblo to Rosita, laughs at the idea that the proportion was the same in both.

Now, what is the proportion in both? One affidavit says that on the then schedule it would take eight men and horses; that is, the horses and men added together make eight, and

that on the proposed schedule it would take twenty-four. Then they would be entitled to just three times the money they were receiving on the original schedule, because three times eight are twenty-four. Let me explain here what I mean by proportion. If I am carrying the mail with, say, four horses and two men, making a total of six, and if then that service is increased so that it takes twelve men and horses, I get twice the original pay; if it takes eighteen men and horses, I get three times the original pay. You understand that there is always a relation between the pay and the number of men and horses used. If I am using one man and one horse and am getting a thousand dollars for the service, and if it is expedited so that I have to use two men and two horses, I would get two thousand dollars. In the first affidavit they had eight men and horses. If they put up the service to what they were going to, it would take twenty-four. Three times eight are twenty-four. Then they would get three times the original amount of money. In the second affidavit he swears that it takes fifteen men and animals on the present schedule, and on the proposed schedule it would take forty-five men and animals. Three times fifteen are forty-five. Three times eight are twenty-four. You see that on both affidavits you get the same amount of money to a cent, because the proportion is absolutely and exactly the same. Yet Mr. Ker laughs at the idea of the proportion being the same. It took eight men and horses in the first affidavit on the present schedule, and twenty-four on the proposed schedule. There the contractor would be entitled to three times the original sum. In the next affidavit it took fifteen men and horses on the original schedule and forty-five men and horses on the proposed schedule. Again, he would be entitled to three times the original sum.

On page 4579 Mr. Ker says the oath was put in for three trips. By looking at page 867 we find that it was for seven trips and not three. There is nothing like accuracy.

On page 4580 Ker says that Brady had on the jacket before him the evidence that Hansom was a subcontractor at three

thousand one hundred dollars a year, and the contract gave the contractor a clear profit of five thousand and forty-eight dollars. The fact is, that Brady's order was made on July 8, 1879. That order is on page 866. Hansom's subcontract was filed October 22, 1879, about three month's after Brady's order was made. And yet Mr. Ker tells you that on that jacket when Brady made the order he had notice of Hansom's subcontract. Unless he had the gift of seeing into the future he knew nothing about it. He would have had to see into the future three months in order to have had it before him at that time.

On page 4703 Mr. Ker says that the letter of J. W. Dorsey, written April 26, 1879, referred to the Perkin's affidavit as not putting the number of men and animals high enough. Let us see. Another case of arithmetic. The letter refers to Dorsey's statement transmitted with the letter. It could not be the way stated by Mr. Ker for the following reasons: The affidavit of Perkins said three men and six animals one trip a week on the then time. That makes nine. On one trip a week with the reduction to eighty-four hours, eight men and twenty-four animals would be required. That makes thirty-two. The proportion then gives three and five-ninths or three hundred and fifty-five per cent. increase of pay. That is the affidavit, he says, that Dorsey wrote out and said was not high enough, and then fixed up one that was. The affidavit that John W. Dorsey sent in the letter says that it will require for three trips a week on the then time four men and twelve animals, making sixteen; on the proposed schedule for the same number of trips eleven men and thirty-two animals, making forty-three. As sixteen is to forty-three—that is, two hundred and sixty-nine per cent. increase of pay. Now, that letter, he says, claims that the Perkins affidavit did not put it high enough. I say that he did not refer to the Perkins affidavit. He could not say that did not put it high enough, because that put it at three hundred and fifty-five per cent., and the affidavit he inclosed in the letter, put it at two hundred and sixty-nine per cent.—

nearly one hundred per cent. less. According to Mr. Ker he was complaining that that affidavit was too low, and so he inclosed one, one hundred per cent. lower. That will not do. Besides all that the affidavit of John W. Dorsey is for forty-five hours, while the first affidavit, I believe, is for eighty-four hours. John W. Dorsey offers to carry it in forty-five hours for two hundred and sixty-nine per cent., and the other affidavit on the basis of eighty-five hours calls for three hundred and fifty-five per cent. Do you not see, gentlemen, it is utterly impossible to believe that?

On page 4738 Mr. Ker again falls into mathematics. He says that Mr. Brady allowed on the Bismarck route for three hundred men and three hundred horses.

I tell you this prosecution ought to go into the stock business. One hundred and fifty men and one hundred and fifty horses were called for by the affidavit. Now, Mr. Ker says when Brady doubled the trips he doubled the horses, and when he doubled the trips he doubled the men. That would make three hundred men and three hundred horses. If he had doubled the trips again he would have had six hundred men and six hundred horses, enough cavalry to have protected that entire frontier. Yet after all the Bismarck and Tongue River business, Mr. Vaile comes in and swears, on page 4062, that the loss on that route to Vaile and Miner was at least fifty thousand dollars; and Mr. Miner swears that the loss on the route was between forty and fifty thousand dollars. Vaile says if he had known at that time of the clause in the contract by which he could have gotten out of it he would have abandoned the route, but that he had not read a contract for ten or twelve years. Now, as a matter of fact, gentlemen, and it seems to me the prosecution ought to be perfectly fair, Brady allowed only forty per cent. of the affidavit made in regard to the one hundred and fifty men and the one hundred and fifty horses, and yet according to Mr. Ker he allowed for three hundred men and three hundred horses; instead of allowing for forty per cent. of one hundred and fifty men and

one hundred and fifty horses, he allowed for one hundred per cent. more. That would have run the pay up, I should think, to about a million dollars. Mr. Ker also says that Mr. Vaile swears that he induced Brady to give an extension to August 15th, and thereupon Mr. Ker makes the remarkable statement that Vaile did not do it; that Boone did it; I am very thankful for the admission. From that it appears that Boone was more potent with Brady than Vaile was.

If he was, why did they have to get somebody close to Brady? Afterwards we are told by Mr. Ker that Mr. Boone was kicked out to make a place for Vaile, so as to get a man close to Brady.

Mr. KER. Will you tell me what page it was I spoke about Boone?

Mr. INGERSOLL. It was Mr. Bliss. It is Mr. Bliss's turn to explain now. The notes that I have were handed to me by another, and I supposed referred to Mr. Ker. Mr. Bliss said:

This, I think, can leave no doubt in the minds of any one that the extension was obtained by Mr. Boone.

Mr. Bliss says that on page 4899, and so I will relieve Mr. Ker of that charge.

Mr. KER. I am glad to be relieved of something.

Mr. INGERSOLL. I do not want to do any injustice to Mr. Ker; between Mr. Bliss and Mr. Ker I am perfectly impartial.

Mr. Ker attacks the affidavit made by Vaile on the Vermillion and Sioux Falls route. Let us get at the facts. The route was let as fifty miles long. That is the distance that was given in the advertisement by the Government. They wanted expedition on that route. The Government asked for it. Mr. Vaile asked if he could make the affidavit, and he made it, supposing the route was fifty miles long. He never had been over it. It turned out that it was about seventy-three miles long, and consequently the affidavit provided for too fast time. The affidavit called for ten hours. That made over seven miles an hour; or, including the stoppages, I presume about ten miles an hour. The difficulty arose out of the

mistake in the distance. Vaile so swears, on page 4030. He also swears that he went to the department and there saw Mr. Brewer, who was in charge of that bureau, or at least of that business, and it was Brewer who suggested to him to make the affidavit. Mr. Vaile did not ask for any expedition on that route. Mr. Brewer spoke to him about it. Mr. Vaile swears that Brewer spoke to him first. Mr. Vaile swears that he made the affidavit at the instigation of Mr. Brewer. Mr. Bliss says Brewer is an honest man, and calls him honest Brewer. Why did he not call honest Brewer to the stand and let him deny that he asked Mr. Vaile to make that affidavit?

The COURT. Yes.

Mr. INGERSOLL. [Resuming]. If the Court please, and gentlemen of the jury, on page 4645 there is the letter from Miner to Carey.

JOHN CAREY, Esq.,
*Fort McDermitt, Nev.*

DEAR SIR: One S. H. Abbott, who was postmaster at Alvord, I find, by accident, is writing to the department that you do not pay your bills, and that there is no need of anything more than a weekly mail.

I wish you would see this man at once and satisfy him; pay him whatever is reasonable and report to R. C. Williamson, at The Dalles. I suppose that is what he is after. He knows nothing of the through mail, and probably a weekly is all he needs; but more likely he wants some money. He complained once before to the department that he had to make a special trip to Camp McDermitt to make his returns, and I sent him thirty dollars, and it was all right. Now, I suppose, he wants a little more money. Yours, &c.,

JOHN R. MINER.

That letter was introduced to show that there was a conspiracy between Miner and Brady; and yet when that man complained that the service was not put on at the time it should have been, and that he was postmaster, was forced to carry his returns to the nearest post-office, and consequently spent about thirty dollars, Miner sent him the money. Why? Because he and Brady were not confederates; because they were not conspirators. For that reason

he sent the man thirty dollars. The letter says, "The man that was postmaster." When this letter was written Mr. Abbott was not postmaster; he had ceased to be postmaster. Yet they have endeavored to impress upon you the idea that when this letter was written to Abbott he was then postmaster. He had written a letter, stating that a weekly mail was all that was wanted, and that Mr. Carey did not pay his bills. Mr. Miner wrote to Carey on that account, "The man is trying to make trouble. He tried to make trouble once before, and we sent him thirty dollars. He is not postmaster now. He has no official position. Go and see him. Give him what is reasonable, and tell him to mind his own business." Why? If he had been in a conspiracy with Brady he would not care what Mr. Abbott wrote to the department. If he was absolutely certain there he would not care anything about it. But having no arrangement with the Second Assistant, having no arrangement of the kind set forth in the indictment, he did not want Mr. Abbott to write letters; he did not want Mr. Abbott to make trouble. That letter, instead of showing that there was a conspiracy, shows absolutely that there was not, and the letter was not written to him while he was an official. The man was not then postmaster. He simply had been.

The next point made by Mr. Ker is a very powerful point, that Mr. Vaile came from Independence, where the James boys came from, and where they steal horses. Suppose I should say that Mr. Ker comes from Philadelphia, the town that Mr. Phipps lives in, the man who stole the roof off of the poorhouse. Would there be any argument in that?

Mr. Ker says that J. W. Dorsey wrote in his letter that the profits would be one hundred thousand dollars a year. That was a mistake. I turn to the letter and I find that it says one hundred thousand dollars in the life of the contract, and not one hundred thousand dollars a year.

Mr. BLISS. Your Honor, I claim the right to call attention to the fact that Mr. Ker read the letter in full referring to the one hundred thousand dollars clear of expenses. He read it and then followed it by the statement of one hundred thousand dollars a year, which was obviously a mistake.

Mr. INGERSOLL. That only makes it worse. After he had read the letter to the jury, and while the echoes of the letter were still in the court-room, he then said one hundred thousand dollars a year, while the letter said one hundred thousand dollars within the life of the contract. Upon such statements, gentlemen, they expect to strip a citizen of his liberty. [To counsel for the Government.] You will have some work to do in a little while. It may be that Mr. Ker forgets these things. I do not say how it happened.

Mr. Ker also tells you that Miner wanted to cut out S. W. Dorsey and J. W. Dorsey and Mr. Peck. Was that because he was a co-conspirator? He also tells you that Miner deserted his friend S. W. Dorsey. Was he at that time a conspirator? Mr. Ker tells you that S. W. Dorsey wanted to gratify his spite against Vaile and that the first thing he did after he got out of the Senate was to write that letter to the Second Assistant Postmaster-General against the subcontracts. Does that show they were co-conspirators? Did he want to gratify his spite because he had made a bargain with them by which they were to realize hundreds of thousands of dollars?

Mr. Ker also says that Miner's letter to Tuttle shows the conspiracy.

It is perfectly wonderful, gentlemen, how suspicion changes and poisons everything.

Let me read you the letter from which Mr. Ker draws the inference that there was a conspiracy. It is on page 885:

WASHINGTON, D. C., *August* 19, 1878.

FRANK A. TUTTLE, *Box 44, Pueblo, Colo.*,

DEAR SIR: Yours 14th received. We accept your proposition, *provided* (so that there shall be no conflict) that a friend of ours, who has recently gone to Colorado, has not made different arrangements before we can get him word.

The petition for expedition should be separate from the petition for increase of number of trips. We make no boast of being *solid* with anybody, but can get what is reasonable. Yours, truly,

MINER, PECK & CO.

You are told that is evidence of a conspiracy. Suppose the letter had been this way: "We boast of being solid. We can get anything, whether reasonable or not." That probably would have been evidence of perfect innocence. He writes a letter and says:

We make no boast of being solid with anybody, but can get what is reasonable.

They say that is evidence of conspiracy. Suppose he had written the opposite, "We do boast of being solid and we can get anything, whether it is reasonable or not." According to their logic that would have been evidence of absolute innocence. Whenever you are suspicious you extract poison from the fairest and sweetest flowers. Prejudice and suspicion turn every fact against a defendant.

On page 4557 Mr. Ker tells us that Vaile never saw Peck, and yet had the impudence to write that his subcontract was signed by Peck in person. The subcontract is in evidence here. Nobody pretends that it was not signed by Peck, and yet that is brought forward as a suspicious circumstance against Mr. Vaile, because there is no evidence that Mr. Vaile ever saw Mr. Peck. Is there anything in a point like that? "My contract was signed by Mr. Peck in person." He does not mean by that that he saw him sign it. The evidence here is that it was signed by Peck, and yet the fact that he says Peck did sign it, and the fact that he had never seen Peck, Mr. Ker endeavors to torture so that you will think he wrote what he knew to be untrue.

On page 3251 Mr. Ker says that Miner does not deny writing the letter marked 63 E. This letter was dated the 10th day of May, 1879, and was on one of the Dorsey routes.

Miner swears that he never signed a paper, never touched pen to paper on any of the Dorsey routes after the 5th day of May, 1879.

Now, gentlemen, after having made all these statements to you, and I have only taken up a few of them, these misstatements, these mistakes, Mr. Ker winds up by telling you it is the safer plan to find a verdict of guilty, because if you find them guilty wrongfully the Court will upset your verdict.

Gentlemen, you have sworn to try this case according to the law and the evidence. You are the supreme arbiters of this case. It is for you to decide upon this evidence, and for you alone. Yet you are told by Mr. Ker to shirk that responsibility. You are told by him to violate your oaths and find against these defendants, for the sake of certainty, and then turn them over to the mercy of the Court. That is not the law. These defendants are being tried before you. They have the right to your honest judgment. If you have any doubt as to their guilt you must find them not guilty or violate your oaths. You are told it is the safer way to find them guilty and then let them appeal to the Court for mercy! That doctrine is monstrous. It is deformed. Such a verdict would be the spawn of prejudice, and cowardice, and perjury. You cannot give such a verdict and retain your self-respect. You cannot give such a verdict and retain your manhood! If you have any doubt as to the guilt of these defendants you must say they are not guilty. You have no right to turn them over to the Court, no matter whether the Court is merciful or unmerciful. You must pass upon their guilt, and you must do it honestly. I never heard so preposterous, so cruel a sentiment uttered

in a court of justice. It amounts to this, gentlemen: If you have any doubt of guilt resolve the doubt against the defendant. If the evidence is not quite sufficient, find against the defendants and turn them over to the mercy of the Court. Why should we have a jury at all? Why should you sit here at all? Why should you hear this evidence, if after all you are to shirk the responsibility and turn the defendants over to the Court? You never will do it, gentlemen.

Now, gentlemen, I wish to call your attention to a few points made by Colonel Bliss. You must remember that Colonel Bliss has been very highly complimented by his associates as a kind of peripatetic index of this case, an encyclopedia of all the papers; that he never makes a mistake; that he recollects amounts with absolute certainty, and that he is infallible. Keeping all these things in your mind, I wish to call your attention to some statements that he has made. First of all, I will refer to a little of his philosophy, or law, and that is, that in every affidavit you should state not the number necessary on the then schedule, but the actual number, and that there could be no doubt about the number of men and horses used at the time when an affidavit was made, and that consequently anybody making an affidavit should put in the number then actually used.

Let us see how that will work. He says the oaths are false because they do not state the actual number of men and horses employed in carrying the mail at the time they were made. He says that the person making the affidavit swore to the number actually employed, and that where that number was not employed that fact of itself shows the affidavits to be false. I say that is not the law. The law calls for the number *necessary*, not the number actually employed. Let me show how easy it would be to cheat the Government on the principle laid down by the gentleman. I will show you how infinitely silly that is. Let me illus-

trate. Here is a route one hundred and fifty miles long, once a week. You know it is possible for one man and one horse for a little while to carry that mail and to go one hundred and fifty miles one way and one hundred and fifty miles the other, making three hundred miles in a week. You can take a magnificent horse and a good, stout, tough man, and you can do it.

The COURT. Or a boy.

Mr. INGERSOLL. Or a stout, tough boy.

The COURT. A boy would be best.

Mr. INGERSOLL. You do not need any boy. Just one man and one horse will answer. The man can ride the horse one hundred and fifty miles in three days, and then ride one hundred and fifty miles back in the next three days. All you have to swear to, according to Mr. Bliss, is the number actually used, and so you would come in and swear to two on this route. Now, when you are making an affidavit as to the number to be used on a schedule to be made, you cannot swear to the number actually in use, because they are not then in use. You have to swear to the number necessary. You have to swear to the number required.

Now, see. On a mail route one hundred and fifty miles long I would only want a good smart horse, and one good active man or boy. I would not need to carry it more than one week, because I could make the affidavit for that week, and then the question would be how many men and horses would be required for a daily mail on the same route. I would put in a reasonable number, and the difference between the number then actually used and the reasonable number to use would be the standard by which to fix my pay.

If you take the man and horse actually used, and then take the number that would reasonably be used, you would make a difference of a thousand per cent. And yet

that is the doctrine laid down here to guide us as to these affidavits.

Let me tell you what the law is. It does not make any difference what you are really using at the time. You must swear to the number that would be reasonably necessary to carry the mail on the then schedule. You must swear to the number that would be reasonably necessary to carry the mail on the proposed schedule. In the first place, if you put a great deal of work on a man and horse, you must put the same proportion on man and horse in the second schedule. If you are easy on man and horse in the first schedule, you must be easy on man and horse in the second. The only object, gentlemen, is to keep the proportion, because you are to be paid according to the number of men and horses used.

Now, they say it would be necessary to go out there in order to tell how many men and horses would be necessary, and that the men who made these affidavits had never been on the routes. There was no need of being on the routes. I could give you the number required on any route two hundred or five hundred miles long. I could give you the number of men and horses reasonably required to carry the mail once, twice, three times, or seven times a week; and I could give you the number reasonably required to carry it at the rate of three miles an hour or five miles an hour or six miles an hour without going there. I need not go there for the purpose of the affidavit. I can take it for granted that the road is good and level, and I can keep exactly the same proportion and nobody can be defrauded. If you take the rule of Colonel Bliss it would be the easiest thing on earth to defraud the Government. That would be by taking the actual number in use and then taking the number necessary.

On page 4761 Mr. Bliss makes the point that according to law the Second Assistant Postmaster-General was not

bound to allow according to the affidavits. He is right as to that. That is what Mr. Bliss says, and that is what John W Dorsey swore he thought, and that is what Mr. Thomas J. Brady swore he did. He did not take the affidavit as a finality. Mr. Thomas J. Brady said that he took it for granted that the man, when he made the affidavit, thought it was true, and that the man, when he made the affidavit, swore to the best of his knowledge and belief. But Thomas J. Brady never swore that he considered himself bound by the affidavit. On the contrary, he swore that he had a standard in his own mind, and that expedition was to cost thirty dollars a mile, or something of that kind. He went by that standard, and he gauged the affidavits by it.

On page 4762 Mr. Bliss says that Brady admitted that he made no inquiry as to the truth of affidavits, and that he accepted them as absolutely conclusive. On page 3434 Mr. Brady swears:

I accepted their statement as conclusive so far as they knew.

Brady also swears that he had his standard in his own mind, as I said before, and that he had an opinion of his own, and that by that standard and opinion he was governed.

On page 4765 Mr. Bliss charges that Brady took the oath of Perkins on route 38113 as the basis for the expedition. Mr. Turner's calculation on file shows that that affidavit was not the basis of the calculation.

Mr. BLISS. Your Honor, allow me to say that subsequently I stated to the Court and to the jury distinctly that while the indorsement on the jacket recited the Perkins affidavit as being the one used, or the affidavit of the subcontractor, and while Mr. Brady transmitted to Congress that Perkins affidavit as the one upon which he acted, I still believed that the calculation showed that he used the other affidavit.

Mr. WILSON. He never made that statement until he

made it during the progress of my argument when I was discussing that very point.

Mr. BLISS. You are mistaken.

Mr. MERRICK. He made it while I was here and I was not here during Mr. Wilson's argument.

Mr. INGERSOLL. If he has taken it back three times, that is enough. On page 4766 Mr. Bliss charges Brady with having two affidavits on the Pueblo and Greenhorn route, from John W. Dorsey, on the same day.

Mr. BLISS. Mr. Henkle called my attention to the fact that it was not the Greenhorn route, but the Pueblo and Rosita route, and I corrected it.

Mr. INGERSOLL. Good enough. I did not know about his taking it back. I was not here at the time. The fact was, however, that only one affidavit was ever filed, and that was an affidavit, not by J. W. Dorsey, but by John R. Miner.

Mr. BLISS. There were two on the Pueblo and Rosita route by John W. Dorsey.

Mr. INGERSOLL. We will come to them. You will get tired of them before we get through with them.

On page 4767 Mr. Bliss refers to two affidavits. The first affidavit, the one not used, calls for three men and seven animals on the then schedule. That makes ten. On the proposed schedule of eighty hours it called for nine men and twenty-seven animals. That makes thirty-six. The proportion then in this affidavit is 3.6, that is, the pay would be 3.6 times the original pay. In the second affidavit five men and fifteen animals, twenty in all, are called for on the then schedule, and on the proposed schedule twelve men and forty-two animals. The proportion there is 2.7. So that the affidavits, leaving out the fractions, which are substantially the same, stand in this way: By the first the contract price would have been multiplied by three and the contractor would have had three

times the original pay, and by the second he would have had twice the original pay. Substituting an affidavit at only double the pay is called a fraud, because they withdrew an affidavit for treble the pay. That is what Mr. Bliss calls a fraud. He says still that it is a fraud.

Now, then, there were two affidavits, and these two affidavits, gentlemen, Mr. Bliss well knew were filed on different schedules. The first affidavit was filed on a proposed schedule of eighty hours. The second affidavit was filed on a proposed schedule of fifty hours. The affidavit agreeing to carry the mail in fifty hours offered to do it at double the pay. The affidavit on eighty hours wanted three times the pay, or substantially that. One was 3.7 and the other was 2.6. Just think of trying to make that a fraud on the Government. Suppose they had filed a third affidavit and offered to carry it for nothing. That would have been carrying a fraud to the extreme.

Mr. BLISS. Your Honor, with reference to that, I said, expressly referring to these two affidavits: It is not a question of proportion. The question is whether the mere existence of those double affidavits did not give Brady conclusive notice that the man who could make those affidavits was not a reliable man, because no matter what the time was to which it was to be increased, he stated the number necessary on the then schedule, as so and so in one affidavit and in the other he stated the number differently. I referred to it solely in that connection, as the language shows on the page referred to.

Mr. INGERSOLL. For instance, a man writes, "You owe me five hundred dollars according to my books," and writes the next day, "I have made a mistake. You don't owe me anything." Mr. Bliss insists that the second letter would show that the man was not to be relied upon. That is his idea of honesty. If in the first letter he had written that I did not owe him anything, and in the second letter I did,

that might be suspicious. But when in the first he writes that I owe him and in the second that I do not, there can be no suspicion as to his honesty. In the first affidavit this man stated so much, and in the second affidavit he put it one-third less. That simply shows the man was paying attention to it and wanted to make an honest offer. And yet everything in this case is poisoned with prejudice and suspicion.

Another point: Mr. Bliss, on page 4770, says that on the Pueblo and Rosita route the number of trips was seven and that there was no increase. Upon that statement he bases an argument of fraud. The argument is that there was no increase of trips. Now, on page 866, the order shows that in the first place there was one trip a week and there were six trips added. That makes seven. The original pay was three hundred and eighty-eight dollars. Six trips were added, and the value of the six trips, which gave two thousand three hundred and twenty-eight dollars of additional pay. Yet Mr. Bliss tells you that there was no increase of trips. As a matter of fact, six trips were added, and that was all that could be added.

Mr. BLISS. Were they added coincidently with the affidavit for expedition?

Mr. INGERSOLL. You say they were not added; I say they were.

Mr. BLISS. No, sir; I said at the time of the expedition there was no increase of trips and the affidavit was based upon the seven trips.

Mr. INGERSOLL. I say that at that time there was an increase.

Mr. BLISS. Your Honor, the point is this: I think I am right in saying that the increase of trips took place after the expedition. That is my recollection about it. I have not referred to the record. I think Colonel Ingersoll will find that is so.

Mr. INGERSOLL. We will see whether you are right. At the time the affidavit was made there were just three trips, and afterward there were four trips added. Let us get it exactly right. I read from page 866:

Date, July 8, 1879. State, Colorado.
Number of route, 38134.
Termini of route, Pueblo and Rosita.
Length of route, fifty miles.
Number of trips per week, one.

Mr. BLISS. I see you are right. The trips were increased.

Mr. INGERSOLL. When anybody gives it up I will stop. That is fair and that is honorable.

Now, the next point. On page 4771 Mr. Bliss says that the oath on the Toquerville and Adairville route was made for seven trips, although the order only gave them six trips, of course the inference being that they got as much pay for six trips as they were entitled to for seven trips. On page 3290 the original order was for one trip. Two trips were added. Look on page 949 and you will find that more trips were added. The second order increased four trips, and that made seven in all; and yet Mr. Bliss makes the statement that there were only six. That is another mistake.

Another point. On page 4772 Mr. Bliss states that Mr. Rerdell spoke in his testimony about J. B. B. I have referred to that. I have referred before to the claim that Rerdell was sustained by the testimony of Mr. Bissell. As a matter of fact, I do not remember that Mr. Rerdell ever said one word in his testimony as to charging anything to J. B. B.

Ninth point. At page 4778 Mr. Bliss states that Dorsey admitted in his letter to Anthony Joseph that the average rate for mail service on star routes was only five dollars a mile. Mr. Dorsey says in his letter no such thing. He says the "average cost of horseback service"; he does not use the language employed by Mr. Bliss, "The average

rate for mail service on star routes," but he says, "The average cost of horseback service." That is a small point, but it shows how anxious the gentlemen are to get the thing fully as big as it is.

Tenth point. At page 4783 Mr. Bliss says that Brady cut off forty-nine thousand dollars of increase on the Mineral Park and Pioche route on the 22d of January, 1879, because the mail bills showed so little business. That is another mistake. The order cutting off the forty-nine thousand dollars was made on the 22d of January, 1880, not 1879. I mention this simply for the sake of accuracy.

Eleventh point. At page 4785 Mr. Bliss says that the mail bills on the Silverton and Parrott City route showed that Brady ran the service up from seven hundred and forty-five dollars to fourteen thousand nine hundred dollars, and that the fourteen thousand nine hundred dollars was afterwards increased to thirty-one thousand three hundred and forty-three dollars and seventy-six cents. The record shows nothing of the kind (see pages 1894–'5). The original pay was one thousand four hundred and eighty-eight dollars (page 1854). The pay under the order of June 12, 1879, was six thousand five hundred and twelve dollars and twenty-eight cents (page 1855). No other increase was ever made. On page 1855 is the increase and expedition, being in all fourteen thousand eight hundred and eight dollars and sixty three cents. The original pay was one thousand four hundred and eighty-eight dollars. A little change was made in the route that brought it up to one thousand seven hundred and three dollars and sixty-five cents. That, together with the expedition, makes a total of sixteen thousand five hundred and twelve dollars and twenty-eight cents. And yet Mr. Bliss told you that it was thirty-one thousand three hundred and forty-three dollars and seventy-six cents. So that this encyclopædia of the papers made a mistake, in one year, of fourteen thousand

eight hundred and thirty-one dollars and forty-eight cents. For the whole contract time it would be a mistake of forty-five thousand dollars. And yet, strange as it may appear, that mistake was made against the defendants. Well, let us go on.

Twelfth point. On page 4800, bottom line, Mr. Bliss says:

> They got so much in the way of offering petitions that Mr. Rerdell being told by Stephen W. Dorsey, upon this route from Pueblo to Greenhorn, to go to work and alter the petitions, inserted the words "and faster time."

As to this petition, 7 B, in which are the words "and faster time," George Sears swears, at pages 829 and 830, that it is in the same condition now as when it was signed by him, he thinks. Thereupon Mr. Bliss told you that he was mistaken in the paper. You must recollect these things.

Mr. BLISS. Are there not two petitions there altered?

Mr. INGERSOLL. That is on another route. There were 7 B, 11 B, and 12 B. 7 B was the written paper, and you introduced 11 B and 12 B. One said "quicker time," and one said "on faster schedule," and yet in the very next paragraph they asked to have it run in eight hours. Mr. Rerdell had to admit that he put in the words without knowing what the petition called for, and that Dorsey instructed him to put them in.

Mr. BLISS. Your Honor, in the very same paragraph, the very line, where I said "faster schedule," I called attention to the fact that the words were unnecessary.

Mr. INGERSOLL. That is not the only point. The point is, who wrote "faster time"?

Mr. BLISS. That is not what I said. You have not given the whole sentence.

Mr. INGERSOLL. You cannot expect me to read your whole seven days' speech. That would be too much. This is what you said:

They got so much in the way of altering petitions that Mr. Rerdell being told by Stephen W. Dorsey, upon this route from Pueblo to Greenhorn, to go to work and alter the petitions, inserted the words "and faster time."

That is it exactly.

Mr. BLISS. Then follows this:

He inserted "and faster schedule," "on quicker time," though there was not any necessity for doing that, because if they had gone further down, after some argument in the petition, to the request for expedition, they would have seen that there was no necessity for that little forgery up there.

Mr. INGERSOLL. That is a magnificent admission. "There was no necessity for" putting that in. I am glad he admits that. He would ask you to believe that S. W. Dorsey, a man of intelligence and brains, would ask to have a petition forged, altered, interlined, without knowing what was in that petition. It will not do, gentlemen.

Thirteenth point. At page 4810, Mr. Bliss says that McBean told Moore, in reference to route No. 44140, Eugene City to Bridge Creek, "that he could carry all the mail in his pocket."

Now, as a matter of fact, Mr. McBean does not state any conversation with Moore covering this route. That was another mistake. No matter.

Fourteenth point. At page 4814, Mr. Bliss, in speaking of the Ojo Caliente route, says the service in fact never was performed in fifty hours; that the evidence of that is conclusive. Now, let us see. Here is a jacket on page 3008, and that jacket shows that out of seventy-eight half trips, expedition was lost on twenty-three and made on fifty-five. Yet Mr. Bliss tells you it never was made. The jacket on page 3040 shows that expedition was lost on twelve half trips and made on sixty-six. And yet Mr. Bliss says it was never made. The jacket on page 3056 shows that at the time they were carrying seven trips a week, nineteen expeditions were lost out of one hundred and ninety-two half

trips. And yet Mr. Bliss says the fifty-hour schedule never was made. Another mistake.

Mr. BLISS. That is long after the time I was referring to. As to the other point, I simply repeat it.

Mr. INGERSOLL. It will not help it to repeat it. For every expedition lost on this route or any other the Government did not pay. When the expedition was lost, the pay was deducted; when the expedition was made the pay was given, and not otherwise. You see, gentlemen, how they have endeavored to get the facts before you; what a struggle it has been over all these obstacles—lack of memory, the immensity of this record—how they have climbed the Himalayas of difficulty; how they have gone over the Andes and Rocky Mountains of trouble to get at the facts!

Fifteenth point. On page 4820 Mr. Bliss states that there could not have been legally allowed, on the evidence on The Dalles route, on expedition over $4,144. As a matter of fact, the evidence does not cover the whole route as to the number of men and horses used. The Government never proved the number of men and horses necessary to carry the mail over the whole route, but only a part. Mr. Ker admits that the evidence is defective in that regard. When you have no standard, gentlemen, you cannot measure.

Sixteenth point. On page 4820 Mr. Bliss, in speaking of the route from Eugene City to Bridge Creek, says that, taking the undisputed facts as they were, before and after the expedition, Brady could not legally have allowed more than $2,991.23. The evidence is (page 1343) that Wyckoff was the subcontractor from July, 1878, to 1880. Powers first carried the mail in 1880. The route was increased and expedited in June, 1879. Mr. Powers never carried it from the expedition. Mr. Wyckoff was the only man who did that, and Mr. Wyckoff was not called. Consequently there was no evidence as to the number of men and horses used

on either schedule. That left the gentleman without a standard and without a measure.

Seventeenth point. On page 4820 Mr. Bliss says that on the Silverton and Parrott City route the oath was made for seven trips a week on the present schedule, when it ought to have been two trips on the old schedule and seven trips for the new schedule. As there is no evidence as to the number of men and horses used on the old schedule, of course there is no evidence in this record to impeach that oath; you cannot find it.

Eighteenth point. On page 4822 Mr. Bliss states that after the passage of the act of April 7, 1880, there were two increases upon the White River route. The fact is there was just one after the passage of that law. Of course a little mistake like that does not make much difference in a case of this magnitude.

Nineteenth point. On page 4824 Mr. Bliss states that Raton was put on the Trinidad route April 24, 1879 (page 1031). The office was embraced on the routes July 1, 1878. The first order in reference to it was made June 6, 1878. It was put on the route from July 1, 1878, increasing the distance twenty-three miles. Yet Mr. Bliss tells you that it was put on the route April 24, 1879.

Mr. BLISS. Is not that the date of the order?

Mr. INGERSOLL. It may have been the date of your order.

Mr. BLISS. Is not that the date of the order in the case?

Mr. INGERSOLL. I do not know anything about that. I give you the exact facts.

Twentieth point. On page 4825, Mr. Bliss, in speaking of the Ojo Caliente route, charges that by the order increasing the trips on this route in February, 1881, there was paid from the Treasury illegally two thousand and eleven dollars and forty-six cents. As a matter of fact had we been paid for that entire quarter it would have amounted

to seven thousand one hundred and thirty-nine dollars and forty-one cents. The pay was not adjusted until April 22, 1881 (page 731). The amount that was then paid was not seven thousand one hundred and thirty-nine dollars and forty-one cents, but it was three thousand seven hundred and twenty-seven dollars and twenty-two cents. It was not for the entire quarter, but simply for the actual service rendered. The quarterly pay for the preceding quarter, before the expedition, was three thousand three hundred and fifty-eight dollars and twenty-six cents; showing that we received only for that quarter an excess, on account of expedition, of three hundred and sixty-eight dollars and ninety-six cents. But he told you that we got illegally two thousand and eleven dollars and forty-six cents. That is a small matter.

Twenty-first point. On page 4897, Mr. Bliss says in effect that Dorsey undertook to state that he kept no books; that he was doing a business amounting, I think he says, to six million dollars a year, and yet he kept no books. On the contrary, Dorsey swore that he did keep books; on the contrary, he swore that Kellogg was his book-keeper. Kellogg swore that he did keep the books. Torrey swore that he was his book-keeper, and kept the books. And yet Mr. Bliss stood up before this jury and said to you that Mr. Dorsey wanted you to believe, or stated that he kept no books of that immense business. It will not do. No books but the red books, I suppose, were kept.

Twenty-second point. At page 4883, Mr. Bliss says that in regard to one of Vaile and Miner's routes (Canyon City to Fort McDermitt) there were large profits, amounting to twenty thousand dollars a year. Then he says eighty thousand dollars during the four years. And yet Mr. Bliss knew at that time that that expedition lasted only eleven months. Trying to fool the jury about sixty-two thousand dollars.

Twenty-third point. On page 4815 Mr. Bliss states that the fines on the Bismarck and Tongue River route, during Brady's administration, were only thirteen thousand dollars. If you will look at page 727 of this record, where the table is put in evidence as to the fines, you will find that he deducted from the pay twenty-nine thousand two hundred and twenty-four dollars. Mr. Bliss made a mistake of sixteen thousand two hundred and twenty-four dollars. But in a case like this that is not important. Gentlemen, you know you cannot always be accurate.

Mr. Bliss is an accurate man, as a rule. He has been called the index of this business for the Government.

Twenty-fourth point. On page 4987 Mr. Bliss says:

> The one fact of the evidence of the payment of money by Dorsey to Brady remains the same whether the books were put out of the way by Dorsey or by Rerdell. That is the great central point, so far as the books were concerned; and as to that the testimony is absolutely uncontradicted.

Mr. Brady swears that Dorsey never gave him a dollar. Dorsey swears that he never had a money transaction with Brady amounting to one cent. Mr. Rerdell does not pretend to swear that he knows of Mr. Dorsey having paid a dollar to Mr. Brady. He does not pretend to swear that he knows of any one of these defendants having paid one dollar to Mr. Brady. And yet Mr. Bliss will tell you that the fact that Dorsey paid Brady money is uncontradicted.

Mr. BLISS. I did not intend that, Colonel Ingersoll. I do not think it is capable of that interpretation.

Mr. INGERSOLL. What did you mean?

Mr. BLISS. As to the statement being in the books it is uncontradicted.

Mr. INGERSOLL. Let me see. He now turns and says he did not mean the money, he meant the books. The evidence is overwhelming on our side that the books did not exist. When you deny the existence of the book I take it

you deny the existence of any item in it. It is a question whether any such books ever existed, gentlemen. Rerdell swore in the affidavit of June 20, 1881, and he swore to that affidavit three times hand-running, that no such books existed. He swore substantially the same thing on the 13th of July, 1882. He told Mr. French that no such books ever existed. He told Judge Carpenter that no such books ever existed. He stated to Bosler that no such books ever existed. And now this gentleman says the evidence is uncontradicted that Brady was charged in those books. That is a good deal worse than the other. Let us go on.

Twenty-fifth point. At page 4962 Mr Bliss says that Mr. Dorsey, according to his own statement—

> Had brought Rerdell up and led him to infamy.

Did Dorsey make any such statement? Did Mr. Dorsey, gentlemen, in your presence, swear that he had brought Rerdell up? Did he, in your presence, swear that he had led him to infamy? Did he, in your presence, swear that he had done anything of the kind? I have got the exact words.

> Who, according to his own statement, he, Dorsey, had brought up, had led to infamy, and who, according to his own statement, had stated that MacVeagh had told a lie.

A curious use of the English language. I believe it is in that connection, though, that he speaks about Mr. Dorsey having the impudence to go to the President of the United States. That is not a very impudent proceeding. In this country a President is not so far above the citizen. In this country we have not gotten to the sublimity of snobbery that a citizen cannot give his opinion to the President; especially a citizen who did all he could to make him President; especially a citizen in whom he had confidence. Not much impudence in that. I do not think that during the campaign General Garfield would have regarded it impudent on the part of Mr. Dorsey to speak to him. I do

not believe in a man, the moment he is elected President, feeding upon meat that makes him so great that the man who helped put him there cannot approach him, and every man who voted for him helped to put him there. I am a believer in the doctrine that the President is a servant of the people. I have not yet reached that other refinement of snobbery.

Mr. BLISS. In point of fact, Colonel Ingersoll, I made no such statement. Now let me read the passage on the very page you refer to.

> Patched up the affidavit of Mr. Rerdell, addressed it to the President, admittedly went to the President with it, and then had the impudence to come here and malign the character of General Garfield by saying that upon that affidavit of an accused man, instead of seeking a trial, he would have removed two members of his Cabinet.

I meant nothing about the impudence of going to the President.

Mr. INGERSOLL. He had the impudence then to come here and malign Garfield by saying that upon that statement he would have turned out two members of his Cabinet. That is Mr. Bliss's idea of impudence; and yet, upon the testimony of the same man, he wants to put five men in the penitentiary.

Mr. BLISS. Not upon the sole testimony, I suppose.

Mr. INGERSOLL. Not upon the soulless testimony. Now, I think that Mr. Dorsey had a right to go and see Mr. Garfield. I think he had a right to take that affidavit with him. General Garfield was told what this man had said concerning Mr. Dorsey. He had the right to take that affidavit of that man with him so that General Garfield, or the then Attorney-General rather, might know how much confidence to put in the statement of that man. He had a right to do that. If he found in this way that his Attorney-General and his Postmaster-General were seeking to have a man convicted by means not entirely honorable, then it was

not only his privilege, but it was his duty to discharge them from his Cabinet. But I am not saying anything in regard to them now, because they are not here to defend themselves.

Mr. BLISS. I want to correct myself. Further down on that page I see I did refer to the impudence of this man going to Garfield.

Mr. INGERSOLL. Well, as Mr. Bliss has been fair enough to state it, I will not follow up my advantage. On another page Mr. Bliss says that the idea that Mr. Vaile did what he did for Miner out of any sympathy is "too thin." Mr. Bliss cannot believe that Vaile became Miner's friend so suddenly, but he thinks it highly probable that they conspired instantly. That is his view of human nature. Friendship is of slow growth; conspiracy is a hot-house plant. Gentlemen, is that your view of human nature, that a man cannot become the friend of another suddenly? Whenever he does become his friend the friendship has to be formed suddenly, does it not? There is a first time to everything. A moment before it did not exist; a moment afterwards it is dead very suddenly.

There was a boy came to town one morning and met an old friend. The old friend asked the boy, "How is your father?" He says, "Pretty well, for him." "How is your mother?" "Pretty well, for her." "Well, how is your grandmother?" "She is dead." "Well," says the old man, "she must have died suddenly." "Well," said the boy, "pretty sudden, for her."

Whenever one man becomes the friend of another, a moment before that he was not, and a moment after he is. It must be sudden. But I imagine that there was a friendship sprang up between Vaile and Miner, and I will tell you why. They have been partners ever since. You, gentlemen, have had the same experience a thousand times. It is not necessary to conspire with a man in order to like

him. Neither is it necessary to like him to conspire with him. Men have conspired without friendship a thousand times more, probably, than they have formed friendships without conspiracy.

Mr. Bliss says that because Miner failed to produce the power of attorney that Moore swore was given to him when he went West, the jury have a right to infer that instructions to get up false petitions were in writing and were included in that power of attorney. Mr. Moore did not swear to the contents of that power of attorney. Do you think that it is within the realm of probability that a man ever gave a power of attorney to another and inserted in it: "You are hereby authorized to get up false petitions; you are further authorized to have them so written that you can tear them off and paste others on?

"N. B. You will make such contracts with all contractors.

"P. S. Don't tell anybody."

There was another witness in this case, Mr. Grimes (page 808). Not the one that wore the coat—

All buttoned down before—

but Mr. Grimes, postmaster at Kearney. He came all the way here to swear that he stopped using mail bills on the route from Kearney to Kent because he was so ordered by a letter from the Post-Office Department. Then it was discovered that he did not have the letter with him; he went home to get the letter, but he never came back any more.

We introduced Spangler (page 341) from the inspection division of the Post-Office Department; I think he was in charge of that division. He swore, as a matter of fact, that there never were any mail bills on that route at all.

Mr. CARPENTER. He was in charge of the mail bills on that route.

Mr. INGERSOLL. The mail bills on that particular route. That man Grimes was brought clear here to prove that he stopped using mail bills, and then we proved that there

never were any mail bills used on that route for him to stop using. I do not suppose that that man was dishonest. These people just got around him and talked to him until he "remembered it." They just planted the seed in his mind, and then came the dew and the rain and the lightning until it began to sprout and in time blossomed and bore fruit—mail bills. When we come to find out that there never were any mail bills used, away went Mr. Grimes.

On page 4969 Mr. Bliss says:

They have not, up to this moment, dared to state under oath, I think, that those books are not in their possession.

On page 3784 Dorsey swears that he never received any such books. Never saw any such books. He swore again and again that he never heard of any such books.

Mr. BLISS. I stated distinctly that the defendants had not stated that in the form required to excuse them from the production. I stated that distinctly.

Mr. INGERSOLL. All right; away goes that.

On page 4983 Mr. Bliss says:

Is it not an absurdity to suppose that Dorsey would leave Rerdell in charge of his business from July, 1879, to August, 1880, and then on from that time until the close of the contract term in August, 1882; leave all the business in that way, and then through Bosler settle the accounts with Mr. Rerdell and have no knowledge in any way, not only of the entries contained in the books which Rerdell kept, but have no knowledge that he kept any books whatever? Is it not absurd to suppose any such thing? These ten routes represented an income of two hundred and fifty-odd thousand dollars a year, or a total business, including income and outgo, of five hundred thousand dollars a year, for three years, going no further than that. These ten routes alone represented transactions amounting to half a million dollars a year. There were one hundred and thirty routes and Mr. Dorsey took one-third in value if not in number. If the value was the same, Mr. Dorsey took not less than forty routes. As ten routes involved a business of one million five hundred thousand dollars in that period, the forty routes involved in that proportion transactions amounting to six million dollars.

You made a calculation on the supposition that all the routes were expedited the same as those in the indictment,

and when you made that calculation you knew they were not expedited.

Mr. BLISS. I object, your Honor, to his making any such statement as that. In the first place, it is not evidence; and in the second place, which is of more importance, it is not true. I did not know any such thing, and I do not know any such thing.

Mr. INGERSOLL. Do you say now that the other routes of his, to the number you talked of, were expedited?

Mr. BLISS. I am not on the stand to be cross-examined now. But I do say to your Honor that there is no evidence of that in this case. And then I go beyond that, and say that I did not know those things then and I do not know them now.

Mr. INGERSOLL. Very well; he made the argument on the supposition that all the routes were expedited. I say that not one of them was expedited in which Mr. Dorsey had an interest.

Mr. BLISS. There is no evidence on that subject.

Mr. INGERSOLL. Is there any evidence of what you say?

Mr. BLISS. I put a supposititious case; you have stated a fact.

Mr. INGERSOLL. I will put another supposititious case, and mine is that the other routes were not expedited.

The COURT. That is the right way to meet it. Counsel ought not to turn to counsel on the other side and make an appeal to his knowledge in regard to matters not in evidence.

Mr. INGERSOLL. I know, but he said he did not know it. Then I asked him, as a matter of fact, if he did not know——

The COURT. [Interposing.] He stated his supposition, and you met that supposition——

Mr. INGERSOLL. [Interposing.] I am always glad to get information.

Now, then, I will go to another point, and that is the $7,500 check. Mr. Bliss speaks of that check at page 4997, and he says:

There is a question raised as to whether it was drawn in Mr. Rerdell's presence.

I do not think there was. How could such a question be raised, gentlemen? The check was made payable to M. C. Rerdell, or his order. On the back of the check is Mr. Rerdell's name, put there by himself. He is the only indorser. And yet Mr. Bliss tells you that there is a question raised as to whether the money was drawn in Mr. Rerdell's presence or not. The check shows, and the evidence is absolutely perfect, that the money was paid to Rerdell in person. The question is this: Whether it was drawn in Mr. Rerdell's presence. If it was paid to him in person, I imagine that he was in that neighborhood at that time. The check was written by him, everything except the signature of Dorsey. It was drawn to Mr. Rerdell, or order, and indorsed by Rerdell himself. There was no other indorser. So that it is absolutely certain that he drew the money in question. And yet Mr. Bliss says the question is whether it was drawn in Rerdell's presence or not.

Mr. Bliss continues and states that the money went to S. W. Dorsey. Did it? Mr. Dorsey, on page 3965, states the circumstances. He was packing to go away. He had not the time to go to the bank himself. He had the check written payable to Mr. Rerdell, or order, and he signed it. Rerdell went to the bank, got the money, brought it back and put it in his carpet-sack. That is the testimony.

Now, Mr. Bliss says:

No evidence was given as to what Stephen W. Dorsey was wanting just at that time with seven thousand five hundred dollars in bills.

According to Mr. Rerdell, he wanted that money to give to Mr. Brady. That is what Mr. Rerdell intended to swear. But when he found that that check was made payable to

him, and indorsed by him, then they had to take another tack. They dare not say then, "That is the check." They dare not say then, "That is the money." Rerdell had forgotten at the time he swore that that check was payable to his order. When he told his seven thousand dollar story to MacVeagh he forgot about that check. When he told it to the Postmaster-General, if he did—I have forgotten whether he did or not—he forgot about that.

Now, gentlemen, I will call your attention to the part to which I really wish to direct your attention. It is an admission by the Government, an admission by Colonel Bliss; it is in these words, on page 4997, speaking of this very thing:

However that may be, they themselves put in a check here for seven thousand five hundred dollars, drawn about the time Mr. Rerdell spoke of, the money upon which admittedly went to Stephen W. Dorsey, though there is a question raised as to whether it was drawn in Mr. Rerdell's presence or whether it was not drawn by him. But the money went to Stephen W. Dorsey, and there was a promise made to show you what was done with that seven thousand five hundred dollars. But, like many another promise in this case, it remains unfulfilled to-day. No evidence was given as to what Stephen W. Dorsey was wanting just at that time with seven thousand five hundred dollars in bills.

Mr. Dorsey offered to tell you what he did with it, and you said you did not want it; you did not want to know when he was on the stand. He offered to tell you what he did with the money, and you would not take his statement. Hear what he says:

Mr. Dorsey was not taking seven thousand five hundred dollars in bills to the West.

How do you know? Who ever told Mr. Bliss that he was not taking seven thousand five hundred dollars to the West? He must have got that from Mr. Rerdell. May be that is the reason they would not allow Dorsey to tell, because before that time they had been informed that he would swear that he took the seven thousand five hundred

dollars to the West. How else did Mr. Bliss find this out?

It is not in the evidence, not a line. Somebody must have told him. Who could have told him? Nobody, I think, except Mr. Rerdell. Is it possible, then, that Mr. Bliss was afraid that Mr. Dorsey would swear that he took it West? And was he afraid also that you would believe it? I do not know. He did not want him to state. Now here is what I want to call your attention to:

After all the talk about that evidence, all the talk about the seven thousand dollars, all the talk about the seven thousand five hundred dollar check, Mr. Bliss at least, admits to this jury:

Of course all that transaction might have occurred precisely as Mr. Rerdell testified, and there might have involved no corruption on Mr. Brady's part.

If, then, it may have occurred exactly as Rerdell swore, and involved no corruption, certainly it might have occurred as Mr. S. W. Dorsey swore and involved no corruption. I will go on now with a little more from Mr. Bliss:

The drawing of the money and going to Mr. Brady's room might have been a mere accident, as a call there to attend to some other business.

Of course, that is reasonable. I might go the bank and draw five thousand dollars, and then I might stop in the Treasury Department, but that is no evidence that I am bribing the Secretary of the Treasury. I might step over to see the President; that would be no reason to believe that I bribed the Executive.

Of course that is not conclusive. It is only a little straw in this case, as showing a transaction of that kind involved in connection with all the evidence you have in this case—

"*A little straw*"—

evidence of Mr. Brady's acts, and particularly as at the time when that occurs evidence in connection with the large increases which Mr.

Brady was then ordering; evidence in connection with the books, and the evidence they bear; evidence in connection with the declarations of Brady to Walsh—evidence all consistent.

And then he adds this piece of gratuitous information:

Mr. Dorsey was not taking seven thousand five hundred dollars in bills to the West.

How does he know? How did he find that out? And has it come to this? Has all the testimony upon that point—has the confession of Rerdell to MacVeagh and James shrunk to this little measure—that it is "only a straw"? Has it shrunk to this measure that Mr. Bliss admits that the whole thing might have been exactly as Rerdell swears, and yet have been perfectly innocent? Has it shrunk to this little measure? The Government would not tell us—I presume the Government will not tell us, what check it was, the proceeds of which were taken by Mr. Dorsey to Mr. Brady. Neither will they say whether that sum was made up in one check or by adding together a number of checks; and, if so, what number?

At page 295 Mr. Bliss told you, in his opening speech, that Rerdell had on one occasion gone with Mr. Stephen W. Dorsey to the bank, and that seven thousand dollars had been drawn; that he had gone with Dorsey to the door of the Post-Office Department, or to Brady's room, at the time—he would not undertake to say which—Mr. Dorsey stating to him that he intended to pay that money to Mr. Brady, and that he (Mr. Dorsey) then went in. But when they come to put this man on the stand he will not swear that Dorsey ever told him that he intended to pay the money to Brady. Probably that part of the statement, that Dorsey told him that he was going to pay that money to Brady, can be found in the affidavit made before Mr. Woodward, in September, and repeated in the affidavit made at Hartford in November. But it is not in evidence here.

Now, we brought all the checks that we had given on

Middleton's bank, with the exception of two, I believe, that amounted to some hundred and odd dollars. We gave the Government counsel notice that there were two others.

Among those checks was this one for seven thousand five hundred dollars. There were many others. I asked the gentlemen to pick out their check; they would not do it. I asked the gentlemen to pick out the checks; they did not do it. And now if we had failed to produce checks that were important in this case, the Government could have produced the books and clerks of Middleton & Company, and shown exactly the checks we drew upon that bank that month. They did not do it. As a matter of fact, I offered all the checks on all the banks I could think of that we had any business with in any way, except one, and that turned out to be the German-American Savings Bank, and it turned out that that went into bankruptcy eight months before this business; so there is no trouble about that. Why did they not pick out the checks upon which they claimed that the money was drawn that was paid to Brady?

Mr. Rerdell, on page 2254, in speaking of the money, swore that money was charged to Brady on the stub. He says that Dorsey told him, "You will find the amount on the stub of the check-book." The jury will notice that he speaks of the "amount," the "stub," and the "book," all in the singular. That was followed, I believe, by about six pages of discussion, and everybody who took part in that discussion, the Court included, spoke of the sum of money as an "amount," upon a "stub," in a "check-book."

I call attention to 2254–'55–'56–'57–'58–'59. On all those pages it is spoken of as a stub of a check-book, or amount on a stub in a check-book. After the discussion was closed, then the witness began to talk about "books," "checks," "stubs," and "amounts." Why did he do that?

His object was to get the evidence broad enough—checks and check-books enough—to fit their notice, to the end that they might get possession of all the check-books, and of all the amounts on all the stubs.

What more? The discussion convinced Mr. Rerdell that it would be far safer to say "stubs" than "stub"; that it would be far better to say "check-books" than "check-book," and far better to say "amounts" than "amount"; because he would have a better chance in adding these up so as to make six thousand five hundred dollars, or seven thousand dollars, or six thousand dollars, than to be brought down to one check, one amount, and one stub-book. So he went off into the region of safety, into the domain of the plural.

Now, the last point—at least for this evening—so far as Mr. Bliss is concerned, I believe, is about the red books. Mr. Bliss tells you that Mrs. Cushman was telegraphed to from the far West. There was a little anxiety, I believe, on the part of Rerdell about the book, and he telegraphed her. She found it there in the wood-shed, you know, hanging up, I think, in the old family carpet-sack—I have forgotten where she found it—and she put it away. Now, there is a question I want to ask here, and I know that Mr. Merrick when he closes will answer it to his entire satisfaction; I do not know whether he will to yours or to mine: How does it happen that Mrs. Rerdell never saw that red book? How does it happen that Mrs. Rerdell, when she was put on the stand, never mentioned that red book? How does it happen that she never heard of it when her husband went to New York to get it; when everything he had in the world, according to his idea, was depending upon it; when it was his sheet-anchor; when it was the corner-stone of his safety? And yet his wife never heard of it, never saw it, did not know it was in the wood-shed, slept in that house night after night and did not even

dream that her husband's safety depended on any book in a carpet-sack hanging in the wood-shed. She never said a word about it on the stand, not a word. Gentlemen, nobody can answer that question except by admitting that the book was not there and did not exist.

But perhaps I have said enough about the speeches of Mr. Ker and Mr. Bliss. Of course, their business is to do what they can to convict. I do not know that I ought to take up much more time with them. I feel a good deal as that man did in Pennsylvania who was offered one-quarter of a field of wheat if he would harvest it. He went out and looked at it. "Well," he says, "I don't believe I will do it." The owner says, "Why?" "Well," he says, "there is a good deal of straw, and I don't think there is wheat enough to make a quarter."

So now, gentlemen, if the Court will permit, I would like to adjourn till to-morrow morning.

Now, gentlemen, the next witness to whose testimony I will invite your attention is Mr. Boone. Mr. Boone was relied upon by the Government to show that this conspiracy was born in the brain of Mr. Dorsey; that these other men were simply tools and instrumentalities directed by him; that he was the man who devised this scheme to defraud the Government, and that it was Dorsey who suggested the fraudulent subcontracts. They brought Mr. Boone upon the stand for that purpose, and I do not think it is improper for me to say that Mr. Boone was swearing under great pressure. It is disclosed by his own testimony that he had eleven hundred routes, and that he had been declared a failing contractor by the department; and it also appeared in evidence that he had been indicted some seven or eight times. Gentlemen, that man was swearing under great pressure. I told you once before that the hand of the Government had him clutched by the throat, and the

Government relied upon his testimony to show how this conspiracy originated. Now I propose to call your attention to the evidence of Mr. Boone upon this subject.

On page 1352 Mr. Boone swears substantially that on his first meeting with Stephen W. Dorsey—that is, after they met at the house—he said to Dorsey that he (Boone) would be satisfied with a one-third interest. Now, the testimony of Boone is that Mr. Dorsey then and there agreed that he might have the one-third interest.

Mr. Dorsey says it is not that way; that he told him that when the others came they would probably give him that interest, or something to that effect.

Mr. Boone further swears that when J. W. Dorsey did come there was a contract—or articles of agreement you may call them—handed to him by J. R. Miner, purporting to be articles of partnership between John W. Dorsey and himself, and that he signed these articles; that that, I believe, was on the 15th of January, 1878, and that it was by virtue of that agreement that he had one-third. It was not by virtue of any talk he had with S. W. Dorsey that he got an interest, and you will see how perfectly that harmonizes with the statement of Stephen W. Dorsey.

Mr. Dorsey's statement is: "I cannot make the bargain with you, but when John W. Dorsey comes I think he will, or they will." It turned out that when John W. Dorsey did come in January he did enter into articles of partnership with A. E. Boone, and did give him the one-third interest. So the fact stands out that he got the one-third interest from John W. Dorsey and not from Stephen W. Dorsey. If the paper had been written and signed by Stephen W. Dorsey that would uphold the testimony of Boone. If Boone had said, "I made the bargain with Stephen W. Dorsey," and the articles of co-partnership were signed by him, I submit that that would have been a perfect corroboration of Boone. Stephen W. Dorsey swears that the

bargain was made with John W. Dorsey, and you find that the agreement was signed by John W. Dorsey, and not by Stephen W. Dorsey. I submit, therefore, that that is a perfect corroboration of the testimony of Stephen W. Dorsey.

At page 1544 Mr. Boone says that, as a matter of fact, all contractors endeavored to keep what they were doing secret from all other contractors. Think of the talk we have heard about secrecy. If the bidders upon any of these routes did not want the whole world to know the amount they had bid, that secrecy was tortured into evidence of a criminal conspiracy. If John W. Dorsey did not want the world to know what he was doing, if Mr. Boone wanted to keep a secret, these gentlemen say it is because they were engaged in a conspiracy to defraud the Government, and crime loves the darkness. What does Mr. Boone say? As a matter of fact, that all contractors endeavored to keep what they were doing secret from all other contractors where they feared rivalry. Of course that is human nature.

Mr. Boone further says that he never knew of one contractor admitting even that he was going to bid. He always pretended, don't you see, that he was not going to bid. He wanted to throw the other contractors off their guard. He did not want them to imagine that he was figuring upon that same route, because if they thought he was, they might put in a much lower bid. He wanted them to feel secure, so that they would put in a good high bid, and then if he put in a tolerably low bid he would get the route. That is simply human nature.

Boone further says that always when a letting came on he had his bids in; that contractors keep their bids secret from rival contractors, not for the purpose of defrauding the Government, but for the purpose of taking care of their business. Now, gentlemen, when men make these proposals and keep their business secret—as it turns out that

in these cases they were keeping their business secret—the fact that they are so doing is not evidence going to show that they are keeping that business secret because they have conspired. Have you not the right to draw the inference, and is it not the law that you must draw the inference, that they kept their business secret for the same reason that all honest men keep their business secret?

At page 1545, Mr. Boone, swearing again about his talk with Mr. Dorsey that night after the arrangement was concluded, says that he—Dorsey—

told me to be careful of Elkins, because Elkins was representing Roots & Kerens, large contractors, * * * the largest in the department, at that time, in the Southwest.

And yet that evidence has been alluded to as having in it the touch and taint of crime, because S. W. Dorsey said to Boone to say nothing to Elkins. Who was Elkins? He, at that time, as appears from the evidence, was the attorney of Roots & Kerens; and who were they? Among the largest, if not the largest contractors in the department; that is, the largest in the Southwest.

Mr. Boone stated that the letter of Peck to S. W. Dorsey requested him to get some man who knew the business to look after the bids or proposals. Now, I want to ask you, gentlemen, and I want you to answer it like sensible men, if Stephen W. Dorsey got up a conspiracy himself, why was it that Peck wrote to him asking him to get some competent man to collect the information about the bids—that is, about the country, about the routes, about the cost of living, about wages, the condition of the roads, and the topography of the country?

If it was hatched in the brain of Stephen W. Dorsey, how is it possible, gentlemen, that a letter was written to him by Peck asking him to get a competent man to gather that information? Mr. Boone swears that he had such a letter. Mr. Boone swears that Dorsey showed the

letter to him. Mr. Boone swears that, in consequence of that letter, he went to work to gather this information. Did Mr. Dorsey do anything about gathering information? Nothing. Did he give any advice? None. Did he ask any questions? Not one. Did he interfere with Mr. Boone in the business? Never.

You know that was a very suspicious circumstance. I believe there was a direction given that letters be sent to James H. Kepner. That was another suspicious circumstance. Mr. Boone swears that he was also in the mail business; that he did not want the letters to go some place; that he had to give at the department an address; that thereupon he chose the name of James H. Kepner, his step-son, so that all the mail in regard to this particular business would go in one box, and not be mingled with the mail in reference to his individual business or the business represented by the firm to which he belonged. What more does he swear? That neither Dorsey nor any one of these defendants ever suggested that name, or ever suggested that any such change be made; that it was made only as a matter of convenience; that it was not intended to and could not in any way defraud the Government.

Now, Mr. Boone has cleared up a little of this. He has cleared up the letter; he has cleared up the charge of secrecy; he has cleared up the charge that we had the letters addressed to James H. Kepner & Co.; he has shown that everything done so far was perfectly natural, perfectly innocent, and in accordance with the habits of men engaged in that business.

Now I come to the next thing (page 1550). The next great circumstance in this case, the great suspicious circumstance, was that the amount of the bid was left blank in the proposals. The moment they saw those blanks in the bids they knew then that the Government was to be defrauded, and they brought Mr. Boone here for the purpose

of showing that that was done to lay the foundation for a fraud. What does Boone swear? He swears that he always left that part of the proposal blank; always had done so; had been engaged in the mail business for years, and never filled that blank up in his life, in which the amount of the bid should be inserted. It was not left blank to defraud the Government, but to prevent the postmasters and sureties, or any other persons, finding out the amount of the bid. Away goes that suspicious circumstance.

After the bids had been properly executed and came back into the hands of the contractors, from the time the figures were put into those routes, what does he say they did?

We slept with them until we could get them to the department.

He says they never allowed anybody to see them after the amount of the bid had been inserted; that they would not allow anybody to see the amount of the bids; that it was left out, however, only for self-protection, and for no other reason. That is the Government's own witness. He is the man they brought to show that this blank in the bid was a suspicious circumstance. He is the man they brought here to show that because Stephen W. Dorsey had told him to say nothing to Elkins, that injunction of secrecy was evidence of a conspiracy.

At page 1552, Mr. Boone, in speaking of these same things, says that however they were made, whether the name of the bidder or the route was put in, or whatever he did—that is, Boone—he did not do it for the purpose of defrauding the Government. They say to him, "Don't you know that you left out not only the amount of the bid, but the name of the bidder?" He says, "Whatever I did, whether I left out the amount of the bid or the name of the bidder, I did not do it for the purpose of defrauding the Government; I had no such idea, no idea of defrauding the Government by leaving any blank or any blanks." He did

the work. Stephen W. Dorsey left no blank; A. E. Boone left every blank; and yet they brought him forward to prove that that was the result of a conspiracy; and after he comes upon the stand he swears, "I left those blanks myself; I always left them in proposals exactly in that way; and whether I left out the amount of the bid or the name of the bidder, I did not do it to defraud the Government; I did it simply to protect myself, as I had the right to do." So much for that. That is gone.

So, speaking of these other proposals (the Clendenning proposals) what does Mr. Boone say—the witness for the Government, the very man who got up those proposals, the man who wrote them, the man who wrapped them up, and sealed them? What does he say? "Those proposals were not gotten up for the purpose of defrauding the Government; I did not send them to Clendenning for that purpose." That is the end of that. No conspiracy there.

The object, don't you see, gentlemen, was to show by Boone that he acted under the direction of Dorsey; that Dorsey was responsible for everything that Boone did; and that although Boone was guilty of no crime in leaving the bid blank, still if he did it by authority of Dorsey, Dorsey had an ulterior motive of which Boone was ignorant. Let us see.

At page 1554, Mr. Boone swears that Dorsey never told him at any time or any place that he wanted any blanks left. And yet they were endeavoring by that witness to saddle that upon S. W. Dorsey. But that witness swears that Dorsey never even told him that he wanted any blanks left in any paper, proposal, bid, or bond. He says that Dorsey never at any time or place told him (Boone) that he (Dorsey) wanted any blanks left, or any proposals of any particular form printed, to the end that a fraud might be perpetrated upon the Government—not a word.

And, gentlemen, I am now in that space of time where

they say this conspiracy was born. At page 1567, before Miner got here, Mr. Boone swears that Dorsey told him that he would advance money for the other defendants, and Mr. Boone swears that after he got here he never asked Dorsey for a dollar except through Miner; that Dorsey never gave a dollar except through Miner.

What more? This is the witness that is going to establish the guilt of Stephen W. Dorsey. Stephen W. Dorsey never told Boone at any time that he had any interest whatever in those mail routes. Boone never heard of it. Dorsey never told him to print a proposal with a blank; never told him to leave a blank after it was printed; never told him to do anything for the purpose of defrauding the Government in any way at any time. This is extremely good reading, gentlemen, when you take into consideration that this is the witness of the Government, their main prop until the paragon of virtue made his appearance upon the stand.

Page 1558. Another great point: That in preparing the subcontracts, Dorsey having it in his mind to conspire against the Government, or really having conspired, according to their story, wanted a provision in a subcontract for increase and expedition.

Why, it strikes me, gentlemen, that that is evidence of honesty rather than dishonesty. If these subcontracts were to hold good during the contract term, and if in the contract given to the contractor by the Government there was a clause for increase and expedition, why should not the subcontract provide for the same contingencies that the contract provided for with the Government? That looks honest, doesn't it?

It was advertising the subcontractor that the moment he signed his subcontract the trips were liable to be increased and the time was liable to be shortened, and that if the time was shortened or the trips increased the pay was to

be correspondingly increased. But I will go on with the testimony.

Page 1558: In preparing the subcontract Mr. Dorsey instructed Boone to provide for an expedition clause. That was a suspicious circumstance. What for? To conform to the expedition clause in the contract with the Government. If making it like the Government contract is evidence of conspiracy, the fact that the Government contracts have that clause is evidence that the Government conspired with somebody. It is just as good one way as the other. The Government made a contract with the contractor, the contractor made one with the subcontractor, and the contractor so far forgot his duties, so far forgot his moral obligations, that he made it just the same as his contract with the Government. Gentlemen, is there any depth of depravity below that? Absolutely copying the contract that the Government was going to make with him, and treating the subcontractor, so far as the contract was concerned, as the Government had treated him, he (Boone) prepared a clause which he thought filled the bill, and which he still thinks, I believe, would have been better to use than the other. When he showed that to Stephen W. Dorsey, Dorsey suggested another form. It was the same thing exactly, but in different words. There was the testimony I have read to you, and now here is what Mr. Bliss states about it at page 4865:

> But Stephen W. Dorsey, away back there, knew sufficient about expedition to appreciate the importance of keeping for the contractors thirty-five per cent. and giving to the men who were performing the service only sixty-five per cent.

Why not? Is that a crime? Suppose I agreed to carry the mail four years for $10,000 a year and I subcontract with another man. Have I not the right to get it carried as cheaply as I can? I just ask you that as a business proposition. Or has every man to treat this Government as

though it was in its dotage? Must you do business with the Government as though you were contracting with an infant or an idiot? Must you look at both sides of the contract? That is the question. The Government, for instance, advertises for so much granite, and I put in a bid which is accepted; at the same time I know that I could furnish that granite for twenty-five per cent. less. Is it my duty under such circumstances to go and notify the Government that I have cheated it, and that I would like to have it put the contract down? There may be heights of morality that would see the propriety of such action, but it is not for every-day wear and tear. Very few people have it; it scarcely ever comes into play in trading horses. Must we treat the Government as though it were imbecile? I say it was a simple business transaction. The Government advertises for proposals to carry the mail; I make my bid for $10,000, and we will say that my bid is accepted. Now, I admit that I could carry it for $5,000 and make money.

Am I criminal if I go on and perform the contract as I agreed and draw the money? Or suppose the people along the route do not want it expedited and increased, and so I talk to them about it; I go to Mr. Brown and say, "Mr. Brown, you are living in this smart, thriving town, and you need a daily mail." I go to the next village and I say, "Why, gentlemen, you will never have a town here until you have a daily mail; I am the fellow now carrying the mail." And I keep talking about it, you know, and finally get a fellow to get up a petition, or I write one myself, and send it around, and say to them, "Gentlemen, what you want is more mail, faster mail; the mail is the pioneer of civilization, gentlemen; have a daily mail, and along the line at once towns and villages and cities will spring up, and all the hillsides will be covered with farms, and schoolhouses will be here, and wealth will be universal." Any crime about that. Every railroad has been built just that

way. Every park has been laid out in every city by just such means. Nearly every street that has been improved has been improved in that way, by men who had some interest in the property, by men who were to be benefited by it themselves, and who ought to be benefited. Should the men that get the public attention in that direction be benefited, or the men who do nothing? I say that the men who give attention to the business have a right to be benefited by it. And yet here is the crime, gentlemen. And then we only gave these fellows sixty-five per cent. and took thirty-five ourselves, because we were bound to the Government to fulfill the contract, as was explained to you so admirably, so perfectly, by Judge Wilson. The contract was to run for four years, and I believe in a certain contingency for six months thereafter. We had to carry out the contract, whether the subcontractor carried out his contract with us or not.

Now, this is what Mr. Bliss says:

So, after a large mass of subcontracts had been struck from the press, which gave to the subcontractors all the increase—

There never was a subcontract that gave to the subcontractors all the increase; there is no evidence that there ever was such a subcontract.

he—

That is, Stephen W. Dorsey—

directed them to be put back on the press.

I should think he would. If he found any subcontracts were printed that gave to the subcontractor all the increase, I do not wonder that he had them destroyed.

Here you get, we will say, a contract for ten thousand dollars for one trip, with the agreement that if there are two trips the compensation shall be twenty thousand dollars. Thereupon you make a contract with a subcontractor, and you agree in that subcontract that he shall have all

the increase. Of course, you want that made over again; of course, you would not make that kind of a subcontract.

He directed them to be put back on the press, and this provision giving the subcontractor his money struck out and this other clause put in.

Gentlemen, that is an entire and absolute mistake. There is no such evidence, there never was in this case, and I take it there never will be. The evidence was—and you remember it; and you remember it; and you remember it; and you [addressing different jurors]—that Stephen W. Dorsey allowed to the subcontractor sixty-five per cent. of the expedition, and that same subcontractor provided what he should have for one trip, and what he should have for two trips; that is to say, what he should have for increase; and it provided at the same time for sixty-five per cent. on expedition. Mr. Boone swears it; others swear it. Not only that, but it is printed in the record again and again and again. Why did Stephen W. Dorsey do that? I can tell you why: He did not. Why did Stephen W. Dorsey do that, if it was not because his fertile imagination had already conceived the plan of defrauding the United States, and he was making an arrangement by which that fraud could be consummated? How would that help him consummate a fraud? Suppose he struck out all the per cent. to the subcontractors; suppose he had not had any subcontract printed; suppose the subcontract was printed, and printed on purpose to deceive and defraud the subcontractors; how does that show that he was trying to defraud the United States? Why, if it proves anything it proves the other, that he had not entered into a conspiracy by which he could get the money from the United States, but had endeavored to get it from the subcontractors. If it proves anything it proves that. But the reason it does not prove anything is because the statement is not correct.

Now, just see how a conspiracy can be built of that

material. A man that can do that can make a cover for Barnum's Circus with one postage-stamp; he can make a suit of clothes out of a rabbit-skin; he can make a grain of mustard seed cover the whole air without growing.

That is given as an evidence that Dorsey had conspired. There is not a thing on the earth that he could have done that would not prove conspiracy just as well as that—just exactly—no other act. Humph! That is the way they build a conspiracy.

Why not take another step? Why not have a little bit of ordinary good hard sense? On the 17th day of May, I believe, 1878, the act was passed allowing the subcontractor to put his subcontract on file. Now, that contract ought to provide for all the contingencies of the service, so that if the trips were increased the Government would know how much to pay that subcontractor; so that if the time was expedited the Government would know how much to pay the subcontractor. The subcontract ought to have been made in that way, and it would be perfectly proper to make it in that way.

I once went to see a friend of mine who had the erysipelas and who was a little crazy. I sat down by his bedside, and he said, "Ingersoll, I have made a discovery; I just tell you I am going to be a millionaire." Said I, "What is it?" He says, "I have found out that if four persons take hold of hands after they have had a hole made in the ground and put a piece of stove-pipe in it, and then run around it as hard as they can from left to right, a ball of butter will come out of the pipe." Now, I think that is about as reasonable as the way conspiracies are made, according to Mr. Bliss.

Now, we come to Mr. Boone (page 1560). He says that the action he had taken was upon his own responsibility, and that at no time had any papers been gotten up with any view of defrauding the Government. That was good.

I am like the Democrat who said, after hearing the returns from Berks County, "That sounds good." Then, here is a question asked him:

Q. I understood you to say that the contract was made between you and somebody, fixing your interest in all this business?—A. Yes, sir.

Q. Do you recollect about the date of that?—A. I think it is on the day John W. Dorsey got here in Washington.

On page 1561 he swears that at the time Boone made that contract with John W. Dorsey he and Dorsey had not conspired to defraud the Government in any way, nor did they ever do so after that contract was made. When was that contract made? It was made on the 15th day of January, 1878. Who made it? John W. Dorsey of the one part, and Albert E. Boone of the other. And they tell exactly what that contract was for. Here is the contract, on page 1561, and this shows that the statement of Stephen W. Dorsey, that the matter was deferred until John W Dorsey should come, is absolutely correct:

That the parties to this agreement shall share in all the profits, gains, and losses as follows: John W. Dorsey shall have two-thirds and Albert E. Boone, share one-third.

Now, gentlemen, there was the original partnership agreement. Let us see if that was ever dissolved.

The next contract was made on the 12th of September, 1878.

Now, therefore, in consideration of one dollar in hand paid, the receipt whereof is hereby acknowledged, I hereby, sell, assign, and transfer to Albert E. Boone all my said two-thirds interest in the routes in the name of said Boone in the States of Texas, Louisiana Arkansas, Kansas, and Nebraska, and in the name of said Dorsey in the States of Texas, Louisiana, and Arkansas.

The reason he did that was because Mr. Miner had made a contract with Boone to that effect; and probably I had better read that now so that you will have it exactly and know what we are doing. I read from page 1569:

WASHINGTON, D. C., *August* 7, 1878.

Whereas A. E. Boone has this day, for the purpose of saving a failure in the routes in the name of John R. Miner, John M. Peck, and John W. Dorsey—

"For the purpose of saving a failure," recollect. Although Stephen W. Dorsey, according to the prosecution, was a conspirator, and although John W. Dorsey was another, and Peck was another, yet on the 7th day of August, 1878, "for the purpose of saving a failure," they made this:

assigned to John R. Miner his one-third interest in the routes in their names, now, therefore, I, John R. Miner, agree that John W. Dorsey shall assign his interest in routes in the name of A. E. Boone in Kansas and Nebraska, Texas and Louisiana, and Arkansas; in the name of John W. Dorsey, in Texas, Louisiana, and Kansas. The latter clause not guaranteed.

JOHN R. MINER.

Now, he said to Mr. Boone, "I have got to have another man come in; we haven't got the money to run these routes; I have got to get somebody with us; if you will go out, I will agree that John W. Dorsey will assign to you his two-thirds interest in all the routes in Kansas, Nebraska, Texas, Louisiana, and Arkansas. I will agree that John W. Dorsey, although he has a two-thirds interest in all these routes, shall assign them to you, A. E. Boone, and they shall thereupon become your property." That agreement was made on the 7th of August, 1878; and then, as I read you before, on the 12th day of September, Miner made that promise good, and John W. Dorsey did assign to Boone his two-thirds interest in all the routes that Miner said he would. Then Boone was out of it. He had no more to do with Miner, Peck & Co., and no more to do with John W. Dorsey; he went his road and they went theirs. He went out in consideration that John W. Dorsey would give him (Boone) two-thirds of all the routes that he before that time

had one-third in. Then Miner took in Mr. Vaile, because he had the money to go on with the business.

Page 1562, still talking about Mr. Boone. There is another very suspicious circumstance that was brought up by the prosecution. These bids were put in in different names, and that was looked at as a very suspicious circumstance! What does Boone say about that? He says that the object in bidding in separate names was not to defraud the Government, but was to have the service divided up and not to bid against each other. That was reasonable. The arrangement was simply to keep from injuring themselves; it was not made to defraud the Government, but it was made so that they might not by accident injure each other. It was a common thing for members of a firm to bid in that way, and it is a common thing for persons to organize themselves for the purpose of bidding and running contracts, and when they thus bid they always bid in their individual names. The fact that we bid in our individual names was taken as a circumstance going to show that we had conspired to defraud the Government, and a witness they bring forward to prove that fact swears that it has been the custom for all firms to bid in their individual names. Away goes that suspicion. The coat-tail of that point horizontalizes in the dim distance.

Page 1563. The point was made, gentlemen, that we bid on long routes with slow time, knowing—understand, *knowing*—that the service would be increased and that the time would be shortened. The only word I object to there is the word "knowing." That we bid on long routes with slow time *thinking* that the service would be increased and the time shortened was undoubtedly true. That we bid *expecting* that the service might be increased and the time shortened is undoubtedly true. That when we bid we took into consideration the *probability* of the service being increased and the time shortened is undoubtedly true. The

only difference is the difference between thinking and knowing; between taking into account probabilities and making the bid because we had made a bargain with the Second Assistant Postmaster-General. That is the difference. Let us see what Boone says about it. I read from page 1563:

On all service of three times a week and under there is a chance for improvement in getting it up to six or seven times a week.

Everybody who has ordinary common sense knows that! If I bid on service for once a week there is a great deal better chance for getting an increase of trips than if there were seven when I started. Everybody knows that. There is about six times as good a chance.

All contractors consider that—

That chance—

in their bids, and bid lower on one, two, and three times a week service than on a daily service—

Why?—

because the chances are the route will be increased.

Boone swears on the same page that he always did that himself; that he always had done it. Yet that is lugged in here as evidence of a conspiracy.

There is a great deal better chance for expedition when a route is let at two or three miles an hour, than when it is let at six or seven.

Of course there is. The slower it is let the better chance of getting it expedited. The faster it is let the less chance of getting it expedited. There is no need of bringing a man here to show that. You know that. If you thought there was more money in expedition and increase than on the original schedule, you would, as I insist, bid on such routes as the advertisement showed the time was to be slow and the service infrequent upon. Now, gentlemen, to take advantage of such a perfectly apparent thing as that will not do. You have heard a good deal about star routes, gentlemen. Every one of you by this time ought to make a pretty good

Postmaster-General; every one of you. If you do not know all about this subject, you never will.

The FOREMAN (Mr. Crane). We ought to be good lawyers, too.

Mr. INGERSOLL. You also ought to be good lawyers, at least on this subject! I do not know that you have all the testimony in your minds, as there have been so many misstatements made, but if you ever are to know anything on this subject you know something now; and if you, Mr. Foreman, or you Mr Renshaw, were to-morrow to go to work to bid on some star routes you would bid on the longest routes, on the slowest time, and with the most infrequent trips. You would do that. Then would you say, "That is evidence that we have conspired"? Has a man got to be so stupid that he will not take advantage of a perfectly plain thing in order to escape the charge of conspiracy? If you were to put your money in land in the Western country you would not go where the country was settled up, and give one hundred dollars an acre for land. You would go where you could get land for two, or three, or four, or five dollars an acre, and say, "There is a chance for land to rise." That is not conspiracy. So if you were going to bid on mail service you would bid where the time is slow, or the route long, and the service once a week. Then you would say that the country might grow, that railroads might be built and that they might get the service up to seven trips a week; and that instead of going on two miles an hour may be they would want to make it seven miles an hour. That is the service to make money on. Is it a crime to make money? Is it a crime to make a good bargain with the Government? I suppose these gentlemen of the prosecution made the best bargain they could with the Government themselves. Is it a crime? I say no. Is a man to be regarded as a conspirator because some outsider thinks he got too good a bargain? That

will not do. Boone says he always did that. Of course he did. He says another thing. These gentlemen say that we did not go above three trips, and that is another evidence of fraud. They say we did not bid on any route with more than three trips a week. Mr. Boone tells you, on page 1565, that the department never advertised for four trips a week. That is the reason I think they did not bid on any of these. He also swears that they never advertised for five trips. That is a good reason for our not taking any routes with five trips, is it not? There were not any advertised. The Government did not offer to let us have any. That is a good reason for not taking any of them. The Government had not any of that kind. After you get beyond three trips Boone swears that the next number is six or seven; never four, never five. Don't you see? And yet it is a very suspicious circumstance that we did not bid on any four-trip routes, or any five-trip routes; that we stopped at three. Why did we stop at three? Because if we had not stopped at three we would have had to go to six. Why did we not go to six? Because at six trips a week we would have been obliged to put up too much money, and to put up too many certified checks. It required too many men to go on the bonds. That is the reason. Gentlemen, if there had been a conspiracy it would have been just about as well for us to bid on six or seven trips to get the expedition of time. If there had been a conspiracy to make money, and it had been understood by the Second Assistant Postmaster-General, he could have just as well given us routes with seven trips a week, and put the service up to seven, eight, nine, or ten miles an hour, and he could have done that in the thickly-populated parts of the country; if it had been the result of a conspiracy.

Let me read more from what Mr. Boone says on page 1565:

The proposals that I destroyed were upon routes of at least six times per week.

How did he come to destroy them? Another suspicious circumstance against Dorsey! Boone said when he went into the business he just took the bidding-book and commenced at A, and was going right straight through to X, Y, and Z, and make a bid, I believe, on every route that was in the book. I think that is his testimony. Boone says:

I was going on without instructions. I was going on without authority from anybody, working on the bids.

He thinks it was the same day that Miner got here, or the day afterwards, and he—I suppose meaning Dorsey—came up to the room and saw what the witness was doing. He was making up bids for every route in the advertisement, going right along with big and little, when Dorsey said there was a mistake. No proposals were to be made for over three times a week or for routes under fifty miles. When Miner came into the room witness asked what was the reason of that. I say upon this point that Stephen W. Dorsey never said a word about it, and that Boone is mistaken. But he says he asked Miner the reason. What did Miner say? Did he say to him, "It is because we have got a conspiracy? We have got it fixed with the Second Assistant Postmaster-General"? No. He said this, he said for fear of failure in getting bonds; that they could not get the bonds for all the service and could not get certified checks for all the service. Boone was going clear through the book from preface to finis. They could not get bonds for all the service and could not get certified checks for all the service. You remember that for all the service over five thousand dollars they had to put up five per cent., I think, in certified checks. Now, there was an immense volume, of three or four thousand routes and he was going to put in a bid on every one of them. That is what Boone

was going to do. He did not understand the conspiracy at that time. Miner explained to him, "We cannot get the certified checks. We cannot get the bondsmen." He did not tell him, "Good Lord, my friend, you don't understand the terms of the conspiracy. We are taking no such service as that. We are taking none over three times a week, because, don't you see, we want the chance for increase. We want the lowest. If we can find any service where the horses agree to stand still, that is the service to take. You must look over the terms of the conspiracy and have some sense about it."

Boone says he was starting in, taking the advertisements, going right through the territory, all over that country, and bidding on every route, not missing one. He never saw Stephen W. Dorsey do any work on the bids. The proposals sent down to the postmasters in Arkansas, including those to Clendenning, he (Boone) fixed himself and sealed them. Gentlemen, there is no evidence that Mr. Dorsey, as I understand it, ever saw one of those papers, but simply the form that was written out by Boone that was sent to Clendenning with instructions what to do with the proposals. That I understand to be the evidence. They proved by Boone that Dorsey never saw them; never wrote them; never ordered them to be written; never ordered a blank to be left unfilled. And yet, gentlemen, he was the man whom they say had brooded over this conspiracy; the man that gave to it life and form. He is the man that used Boone and John W. Dorsey and Peck and Miner as instrumentalities and tools.

What more? Did Boone take those bonds up to Dorsey and show them to him? He says that he did not open them; that he did not show them to Dorsey. That is what Mr. Boone swears. Surely Mr. Boone is an honorable man, stamped with the seal of the Department of Justice. He did not even show them to Dorsey. Dorsey never saw any-

thing except the form after Boone had made it out. I showed you that form on yesterday, I think, marked 16 X. That is the only thing that Dorsey saw. He did not know what blanks were left in the bonds, or whether any were left. He never gave any orders about them, and never saw them. Yet the prosecution want you to hold him responsible as a conspirator for those bonds.

What more, gentlemen? Those bonds were never used. Nobody was ever defrauded. Not a proposal was put in the Post-Office Department. They never came to life. Dead! No contract, says Mr. Boone, was ever awarded on those proposals, even the proposals sent back, unless it was a contract to him, Boone. That is what he swears. And yet Dorsey is to be held responsible.

Let us hurry along, gentlemen. See how Dorsey came to do this. How did that arch-conspirator, as they claim him to be, happen to write that letter to Clendenning? On page 1567 Boone says that he suggested to Dorsey that he had better send a note with the proposals to Clendenning. Boone suggested it. He was not a conspirator, but he suggested it. Dorsey was the conspirator, but never dreamed of it. How fortunate for a conspirator to have an innocent man think of the means of carrying out a conspiracy; never thinking of crime, but having it all suggested by perfect innocence and then crime taking advantage of it. That is the position! He suggested that Dorsey would better send a note with the proposals to Clendenning. I will read from page 1568:

Q. Was there not danger that he would be declared a failing contractor? Was it at that time the practice of the department if a man, for instance, had fifty contracts and failed on one to declare him a failing contractor on all?—A. No, sir; but they would declare him a failing contractor on that one route and suspend his pay until he paid up the loss to the Government—just my case now, exactly.

Q. That was one of the reasons that you had. Now, you were informed at that time that they had not the money to carry this on.

When, as a matter of fact, did you go out of the concern?—A. The 8th day of August, 1878.

Q. Was S. W. Dorsey then in Washington?—A. No, sir; he was not. He had been gone ten or twelve days.

Now, then, we come to August 7, 1878, the time that Mr. Boone went out. He did it for the purpose of saving a failure on the routes in the names of Miner, Peck, Dorsey, and himself. That is what he went out for, and that is his only reason. On page 1570 Mr. Boone swears that so far as he knows neither John W. Dorsey, John R. Miner, John M. Peck, nor Stephen W. Dorsey had any arrangement with the Second Assistant Postmaster-General to increase the service; none whatever.

Boone went out on the 7th day of August, 1878. S. W. Dorsey was in New Mexico. He did not return here until about the time Congress assembled in December. Boone swears that he then learned from S. W. Dorsey that he, Dorsey, did not know that Boone was out of the concern; did not know that he had left on the 7th day of August, 1878. Now, gentlemen, if Stephen W. Dorsey was the main conspirator, if he was doing this entire business, is it possible that A. E. Boone went out on the 7th day of August, that John W. Dorsey assigned his interest in all the routes mentioned in the agreement, and John R. Miner took in Vaile, and the service was put on those routes by the money furnished by Vaile, that all that was done and yet Stephen W. Dorsey never heard of it and did not even know that Boone was out, did not even know that Vaile was in? Besides that, gentlemen, as I told you, Dorsey was not here. He was in New Mexico. He was in utter ignorance of this entire business, and yet they claim that he was the directing spirit.

Mr. Boone further testifies, on page 1571, that Brady showed him a telegram from the postmistress at The Dalles, saying that the service was down. When I read that I thought may be that was where Moore got his hint to swear

that he telegraphed to find out what was done with that service. Boone further swears that Brady said that it must be put on; that he said it could not be put on at the contract price, and that Brady told him, "I advise you to telegraph and put it on at any price," and that unless all the service was on by the 15th day of August he would declare the contractor a failing contractor on every route the service was down upon. That is what Brady told him. Stephen W. Dorsey was not here. According to the testimony of Moore he knew when he went away that the service in Oregon was not put on, but he abandoned it, and paid no attention to it. He happened to meet Miner at Saint Louis, and told him, I believe, "There are my notes for eight thousand five hundred dollars. That is all I will do. I am through! I have already advanced thirteen or fourteen thousand dollars. I will not advance another dollar." Why did not Miner tell him, "If you are not going on with this conspiracy I am going home"? Why didn't Miner tell him then, "What did you get up a conspiracy like this for, just to abandon it"? Why did not Miner say to him, "This is your child. I became a criminal at your suggestion. I entered into this conspiracy because you urged me to, and now after we have got the routes, you are going to abandon it"? Why did he not say to him, "Dorsey, if you are not going on with this conspiracy I am going back to Sandusky"? Did Dorsey at Saint Louis treat it as his bantling? or did he say to Miner, "This is all I will do"? Did he mean for himself? No. "All I will do for you."

Certainly he would not have made the threat to Miner that he would not do anything more for himself. He then said to Miner, "I am through!" Miner knew at that time that Stephen W. Dorsey had not the interest of one solitary dollar except the money he had advanced. Stephen W. Dorsey, according to the testimony of this prosecution, knew when he left this city that the routes

were not in operation in Eastern Oregon. He went away knowing that J. W. Dorsey and John R. Miner and John M. Peck were in danger of being declared failing contractors. Yet he never even called on Brady to see about it. He never asked to have the time extended a minute. He never took the least interest in the business. He started for New Mexico, and went by way of Oberlin, Ohio. He happened to meet Miner in Saint Louis, and for Miner's sake, for Peck's sake, for John W. Dorsey's sake, and not for his own sake, he gave them some notes to the extent of eight thousand five hundred dollars that they could have discounted, and said to Miner then and there. "That is the last dollar. That is the last cent." What more did he do? He abandoned the whole business. He went to New Mexico. He never wrote about it; he never spoke about it; he never received a dispatch concerning it until the following December, when he came back to Washington, and then for the first time found that Boone had gone out and that Vaile had come in. What more? Although he was interested to the extent of thirteen or fourteen thousand dollars, he did not know until he came back in December that his security had been rendered worthless. He found that out then for the first time. That is a fine model of a conspirator. Reading again from Boone's testimony, on page 1371:

Fully a month and a half of the time had been taken up by the Congressional investigation, and we—

That is to say, Miner, Peck, Boone, and the rest—

did not know what to do with the service. We dared not to move. We expected that the contracts would be taken from us.

Do you tell me that under such circumstances, if Stephen W. Dorsey had conceived this thing, he would have gone off and left it? Do you tell me, with the entire business trembling in the balance, without the money to put the service on, at the mercy of Thomas J. Brady, that if

Stephen W. Dorsey had gotten up that conspiracy, and also put in thirteen or fourteen thousand dollars, he would have gone away and left it, and told Miner and the others, "I will have no more to do with it," and leave it so effectually and so perfectly that he did not even know that Boone had gone out and Vaile had come in until the following December, when he came here to take his seat in the Senate?

On page 1580, again quoting from Mr. Boone:

The fact—

Here is something that rises like the Rock of Gibraltar. It is one of those indications of truth that rascality never had ingenuity enough to invent:

The fact that Dorsey refused to advance any more money on account of this business was taken into consideration by me when I made up my mind to go out.

Do you want any better testimony than that, that Dorsey did refuse to advance any more money?

Don't you see how everything fits together when you get at the facts? How naturally they all blend and harmonize when you get at the facts. Now, here is some more from Mr. Boone:

If I had not gone out the service would have undoubtedly failed, unless they got the money to put it on. When Mr. Dorsey declined to furnish any more money or to indorse any more notes, there was nothing else to do but for me to go out and let somebody else come in who had the money.

That is a witness for the Government, and yet at the time that happened they say there was a great conspiracy; that the Second Assistant Postmaster-General was in it; that a Senator of the United States was in it; and that these other men were simply tools. It will not do, gentlemen. If that had been the case Stephen W. Dorsey would have remained here. He would have gone to Mr. Brady and said, "I must have time," and Mr. Brady would have given him all the time he desired, because, according to

this prosecution, it was their partnership business. Brady had ten times as great an interest as Stephen W. Dorsey. According to the testimony of Mr. Rerdell, Brady had an interest of thirty-three and one-third per cent., and according to the testimony of Rerdell and Boone, Dorsey only had an interest of seven-eighths of one per cent.

That means, as I understand it, according to their testimony, thirty-three and one-third per cent. of the gross expedition; not profits, but of the gross expedition. That is what they swear. When he gave on a route an expedition of, say, six thousand dollars, two thousand dollars would go to Brady each year. In other words, thirty-three and one-third per cent. of the money paid for expedition went to Brady.

Mr. Walsh testified and gave the exact figures, and called the amount, if the Court will recollect, sixty thousand dollars, and twenty per cent. he said of that is twelve thousand dollars. That had to run, he says, for three years, and that made thirty-six thousand dollars. That is the testimony in this case, gentlemen. If you should have a row of men as long as the row of kings that Banquo saw, stretching out "to the crack of doom," and they should swear to it, I should still die an unbeliever; but that is their testimony. Dorsey ran away and left his conspiracy and Brady would not attend to his own business. Now, I read again from Boone:

> With regard to the preparation of circulars, the sending of them to postmasters, the printing of proposals, the printing of bonds and subcontracts, there was nothing done differently from what I had always done before.

Recollect that. He is a Government witness. Dorsey in a conspiracy got Boone to help him, and in helping him Boone did nothing different from what he had always done before. There is not much left of this case, gentlemen, but I will keep going on just the same. Mr. Boone swears

that he followed the regular custom and practice of doing business.

Then, there is another suspicious circumstance. At the bottom of the contracts published by the Government, for the purpose of informing contractors as to how the bonds or contracts are to be signed, and exactly what is to be done by each person, there are a lot of instructions.

Mr. CARPENTER. On the proposals.

Mr. INGERSOLL. On the proposals. When they got up the proposals of their own, they, understanding the business, left off all those directions that the Government put upon its forms. Why? Those directions were put there for the benefit of men who did not understand the business. These men did understand the business, and consequently it was nonsense for them if they had to have the printing done, to put on the bottom of the contracts two or three paragraphs of directions to themselves. They understood exactly how to do it without the directions.

Who left them off? Stephen W. Dorsey? No. John W. Dorsey? No. He had nothing to do with it. Miner? No. He had nothing to do with it. Who left them off? Boone says he did. Was he instructed to do it? No. Did it take a conspiracy to leave them off? No. He left them off for two reasons, and good ones, too. One was to save the expense of printing. That was a good reason. There was no conspiracy needed for that. The other was, that knowing how to perfect the proposals, and understanding all those instructions, there was no need of having them printed for their benefit.

Next, on page 1582. What instructions as a matter of fact did Mr. Boone receive from Mr. Dorsey, if he received any? The question arises, upon what subject? In reference to what particular point? Boone says on this page that he received no instructions from Dorsey in reference to the business except in regard to the subcontract blanks.

That is the one subject on which he received any instructions from S. W. Dorsey. I have shown you that those instructions were in the interests of honesty and fair dealing. Those were the only instructions he received. On every other subject there is not a word. Why? Here Boone gives the reason. "I did not require any." Why? Because he understood the business himself. What else? "I was to go ahead and do whatever was necessary to be done." He did it without consulting anybody. He did it in his own way. He did it as he thought best for all concerned. Now, gentlemen, there will be an effort made to convince you that Stephen W. Dorsey did everything during all that period. If you are told that, when you are told it remember what I tell you now: that Mr. Boone swears that he did it himself; that he attended to the entire business, and that he was instructed by Dorsey in no particular except as to that one blank, and that I have clearly demonstrated was in the interests of honesty and in the interests of the subcontractor, so that the subcontract might agree with or be similar to the contract made with the Government. That is all.

Now we come to another point. You must recollect that Mr. Boone got out the circulars. Mr. Boone sent to all the postmasters to know about the roads and the price of grain and the price of labor, about the snow in winter and the rain in the spring. He got all that up. He went through the bidding-book originally and made the bids. He it was who prepared most of these proposals. He did all the work until Miner came. S. W. Dorsey did not do any of it. Boone never saw him working upon or touching the proposals. What S. W. Dorsey did he did at Boone's request. What he did he did at Miner's request. What he did he did simply because he was a friend. Boone attended to it all. Now, what does Boone say on page 1584? He swears that so far as he knew there never was any conspiracy on the

part of these defendants with him, with each other, or anybody else, in reference to these routes, or any route bid for and awarded to them during that time. There was no conspiracy to defraud the Government in any way. That is what the Government witness swears to—a man brought here to stain the reputation of Stephen W. Dorsey. That is what a Government witness swears; swearing, too, under pressure; swearing, too, under circumstances where the Post-Office Department could strip him of everything he had on earth; swearing under circumstances where if he did not please the Government they could pursue him as they have pursued us. Perhaps I had better read what he says. I read from page 1583 of my examination:

Now, then, so far as you know, Mr. Boone, was there any conspiracy on the part of any of these defendants with you, or with anybody else, to your knowledge, in respect of these routes mentioned in the indictment or of any routes bid for and awarded to them during that time—any conspiracy to defraud the Government in any way?

And he answered:

No, sir.

That was a Government witness, acquainted with all the transactions during that time. He was swearing under the shadow of power, with the sword hanging over his head, and yet he swears he never knew or heard of any such thing.

Let us go on. On page 1589 he swears that Mr. Dorsey told him to fix the blanks and make them up and to write what he wanted done in Arkansas, and that while he, Boone, was engaged in so doing he said to Dorsey, "Had you not better write a note so that I can attach it to the blanks?" And Dorsey did so. Dorsey told him to fill up what he wanted in Arkansas, and what was necessary to be executed there, and he did so.

Boone indicated exactly what he wanted put in. I showed you the Clendenning bonds yesterday and showed you just

what Boone did. He filled up the blanks that he wanted to have filled down there. Of course, the blanks that were already filled in he did not want interfered with. That is what he says. There is another part of his testimony. I want to call the attention of the gentlemen to it. "I hand you," said they, "32 X." Mr. Bliss did the handing. What was that? That was the Chico letter. What did they want to introduce that for? To show that S. W. Dorsey was interested personally in these routes in 1878. That was a magnificent piece of testimony for them to show that Dorsey in 1878 was writing to Rerdell to watch the advertisement of these routes. So they introduced that letter. Mr. Boone looked at it. He was a Government witness. The noose was around his neck and the other end of the rope was in the hands of Mr. Bliss. What did Mr. Boone say? "Mr. Dorsey never wrote that letter." Then said Mr. Bliss to him, "That is not Mr. Dorsey's writing?" And Mr. Boone said "No, sir." And at the same time threw the forged scrap away contemptuously. What else? On April 3, 1878, Mr. Dorsey was here.

Mr. MERRICK. Was Mr Dorsey here at that time?

WITNESS. He was here, sir; and I was in communication with him on that very day.

That is the evidence of a Government witness; a man who was depended upon to show that not only my client, but that Mr. Miner entered into a conspiracy in the fall of 1877 to defraud this Government. I want you to remember one thing which I was about to forget. Mr. Ker, I believe, spoke six or seven days and I do not remember of his having mentioned the Chico letter. He acted as if it had a contagious disease. He was followed by Mr. Bliss in another week, but he did not mention the Chico letter; at least I have never happened to read it in his speech. Both of them are as dumb as oysters after a clap of thunder. Not a word. They did not, either of them, have the courage

to refer to it. They did not have the nerve to ask you to believe it. I tell you one thing, gentlemen, I would either admit that it was a forgery, or I would swear that it was genuine. I would do something with it. I would not allow that paper, blown by the wind, to scare me from the highway of the argument! I would do one thing or the other. I would either admit that Mr. Rerdell forged it, or I would insist that it was the handwriting of Stephen W. Dorsey. Why was it left where it was, gentlemen? They could not get anybody to swear that it was Dorsey's handwriting. That is all.

Now we will take the next step. They had so much confidence in that witness that they concluded they would prove the pencil memorandum by him. They had such a clutch on him. So they stuck that up to him. Recollecting the position he was in, recollecting the danger, recollecting all that might probably follow speaking the truth, here is what he says:

Everything above "profit and loss" in that memorandum favors the handwriting of S. W. Dorsey.

What else?

And everything below favors the handwriting of M. C. Rerdell.

Fit conclusion for a Government witness, brought here to show that Stephen W. Dorsey was the arch-conspirator. And they ended the witness; dismissed him from the stand, after he had shown that Dorsey did not conspire; after he had shown that he himself fixed the subcontracts, with the exception of only one; after he had shown that he himself filled out the blanks to send to Clendenning; after he had shown that he did everything without being advised by S. W. Dorsey, and then he swore that their principal witness was a forger. Then they dismissed him. That was the end of the Government witness who was to brand the word "conspirator" upon the forehead of Stephen W. Dorsey's reputation. But instead of putting "conspirator" there, he put the

word "forger" upon the principal witness for the Government. Magnificent exchange! Now, gentlemen, you know as well as I do that Mr. Boone knew all that was happening during that entire time. You know as well as I do that he did not swear anything for the defence that he could help swearing.

What else? Mr. Bliss, on page 303, says that:

Parties conspiring make an informal verbal agreement.

When did we make that agreement? When does the testimony show that we made an informal verbal agreement? Who were present at the time? Where were we? Do you recollect the number of the house? Do you recollect the day of the month? Has any one of you ever had in his mind which side of the street that was on? What town was it in? Could you locate it if you had a good map? I do not care whether it is informal or formal. Did we make one? In order to make a verbal agreement you have to use some words. Is there any evidence as to the words we used? Not a word that I have heard, not a word.

What else? He says that this is necessarily secret and intended to be secret. The first thing done was that Dorsey told it to Moore. Then, for fear it would get out, J. W. Dorsey told it to Pennell and to thirty fellows around the camp-fire out in Dakota. And there was a suspicion in Brady's mind that somebody might hear of it, and so he told Rerdell. He says, "Get the books copied; *this is a secret thing*." Then Dorsey wrote it to Bosler, and he was so awfully afraid that it would get out that he kept a copy of the letter. You see, Mr. Bliss says the object was to keep it secret. Then Miner and Vaile told it to Rerdell for fear he would not believe it when Brady told him. They were bound the thing should not get out. Yes, sir. And then Rerdell, just bursting with the importance of keeping that secret, told it to Perkins and Taylor; went away out there for that purpose. And then Moore, he gave it away

to Major and McBean for the purpose of *keeping it secret.* Then Miner told Moore. From whom did they keep it secret? Nobody in God's world but Boone. He is the only fellow that nobody told. Boone went through it all, saw all the plan and heard all the whispering, and he is the only man in the country, I think, that did not suspect it. And on the 7th day of August he left the concern because there was not a conspiracy, and admits to you that if he had had even a suspicion of it he would have staid—staid or died.

Now, was there ever a conspiracy published so widely, that one end of the country kept so secret from the other? Was there ever a conspiracy like that, the news of which ran through the West like wild-fire, while the fellows at the East never heard of it? Everybody knew it out on the plains. All you had to do was to subpœna a fellow that wanted to come to Washington, and he would remember it. And yet that is the evidence that the prosecution desires you to believe. I do not believe it. I do not think I ever shall. But then they promised so much at the beginning, and they have done so little in many respects.

Something had to be said, and so Mr. Bliss, on page 265, in a little burst of confidence to the jury, says:

At least one United States Senator was the paid agent of these defendants.

Who was the Senator?

Mr. BLISS. Did I say that, sir?

Mr. INGERSOLL. Look at page 265 and see whether you did.

Mr. BLISS. Read all that I said there.

Mr. INGERSOLL. I will do that.

But we shall show to you that at least one United States Senator, urging such increase, was the paid agent of these defendants.

Mr. BLISS. I then went on and said we should show it if you put him on the stand.

Mr. INGERSOLL. Yes, if we furnished you the evidence.

Mr. BLISS. No, sir; that is not what I said.

Mr. INGERSOLL. Why didn't you produce the Senator?

Mr. BLISS. Why didn't you put him on the stand?

Mr. INGERSOLL. How did I know what Senator you meant?

Mr. BLISS. Did you have two?

Mr. INGERSOLL. No, sir; and we did not have the one. If you could have proved it, it was your duty, as the attorney of the United States, to do it, and if you did not do it, you did not do your duty in this case.

Mr. BLISS. Whose name is expressed in the memorandum?

Mr. INGERSOLL. Why did you not say that to the jury? You dared not do it. That is like what was said here the other day before this jury, and taken out of the record. We will come to it. These are the gentlemen who did not wish to stain the names of citizens. These are the gentlemen who did not wish to bring anybody into this case that had not been indicted. And yet Mr. Bliss, in his opening, said that he would show you at least one Senator who was the paid agent of these defendants; and now, having failed to do it, he stands here before you and asks whose name was on the pencil memorandum, meaning that J. H. Mitchell was the paid agent of these defendants.

Ah, gentlemen, I would not, for the sake of convicting any man on this earth, stain the reputation of another in a place and in a way where that other could not defend himself. I would not do it. I do not think there is any crime beyond that. It is as bad to stab the reputation as it is to stab the flesh; it is as bad to kill the honor of the man as to put a dagger into his heart.

There are so many things in these papers that I would never get through, if I commented upon them all, if I talked forty years. I now refer to page 4509. I have to change from one of these lawyers to the other. Now,

on this subject of subcontracts, showing how we are endeavoring to cheat and defraud the Government, Mr. Ker says, at page 4509:

> Acting upon Stephen W. Dorsey's advice he put in this clause giving the subcontractors sixty-five per cent. of the increase. I want you to remember the sixty-five per cent., because I will show you some subcontracts with that amount in, but I do not want you to think for one moment that the subcontractors ever got a dollar out of it.

Gentlemen, the evidence is that the subcontractors were paid the amount mentioned in their subcontracts. I believe all of them are on file in this case, and on all that were filed in the department the money was paid directly to the subcontractor. And yet Mr. Ker tells you that he does not want you to think for a moment that the subcontractors ever got one dollar out of it. Is it possible, gentlemen, that there is any necessity for resorting to such statements? Can you conceive of any reason for doing it, except that they are actually mistaken, except for the fact that they know they have not the evidence to convict these defendants?

We are not begging of you. We are not upon our knees before you. But we do want to be tried according to the evidence and according to the law. We do not want your mind, nor yours, nor yours [addressing different jurors] poisoned with a misstatement. We want to be tried, and we want the verdict rendered by you when every fact is as luminous in your mind as the sun at mid-day. We want every fact to stand out like stars in a perfect night, without a cloud of doubt between you and the fact. That is the kind of a verdict we want. We want a verdict that comes from a clear head and a brave heart. We do not want a verdict simply from sympathy. We want a verdict according to the evidence and according to the law. And when the verdict is given we want every one of you to say, "That is my verdict; I found it upon the evidence and

upon the law; dig beneath it and you will not find used as the corner-stone a misstatement, or a mistake, or a falsehood; it stands upon the rock of fact, upon the foundation of absolute truth."

Do you know that if I were prosecuting a man, trying to take from him his liberty, trying to take from him his home, trying to rob his fireside and make it desolate, and if I should succeed and afterwards know that I had made a misstatement of the evidence to the jury, I could not sleep until I had done what was in my power to release that man; and after he was released, or even if he were not released, I would go to him when he was wearing the prison garb, and I would get down on my knees and beg him to forgive me. I would rather be sent to the penitentiary myself, I would rather wear the stripes of eternal degradation, than to send another man there by a misstatement or a mistake that I had made. That is my feeling. I may be wrong.

It may be that I am guilty, according to Colonel Bliss, of sneering at everything that people hold sacred. But I do not sneer at justice. I believe that over all, justice sits the eternal queen, holding in her hand the scales in which are weighed the deeds of men. I believe that it is my duty to make the world a little better, because I have lived in it. I believe in helping my fellow-men. I do no not sneer at charity; I do not sneer at justice, and I do not sneer at liberty. And why did he make that remark to you, gentlemen? Is it possible that for a moment he dreamed that he might prejudice your minds against the case of my client, because, I, his attorney, am not what is called a believer? Is it possible that he has so mean an opinion of a Christian that a Christian would violate his oath when upon the jury, simply to get even with a lawyer who happened to be an infidel? Is that his idea of Christianity? It is not mine; it is not mine. I stand before you to-day, gentlemen, as a man

having the rights you have, and no more; and I am willing to work and toil and suffer to give you every right that I enjoy. And I know that not one of you will allow himself to be prejudiced against my client because you and I happen to disagree upon subjects about which none of us know anything for certain. I do not believe you will. And yet, that remark was made, gentlemen—I will not say that it was made, but may be it was—hoping that it would lodge the seed of prejudice in your minds, hoping that it might bring to life that little adder of hatred that sleeps unknown to us in nearly all of our bosoms. I have too much confidence in you, too much confidence in human nature to believe that can affect my client.

Now, gentlemen, there is no pretence, there is no evidence that every subcontractor did not get the per cent. mentioned in his subcontract, except one, and that was Mr. French, on the route from Kearney to Kent; and the evidence there is that Miner settled with him, I believe, and gave him a certain amount of money in lieu of expedition. That is the solitary exception.

Now, gentlemen, I come to a most interesting part of this discussion, and I hope we will live through it. In the first place, what is a conspiracy? Well, in this case, they must establish that it was an agreement entered into between the persons mentioned in this indictment, or two of them, to defraud the Government. How? By the means pointed out and described in the indictment. While it may not be absolutely necessary to describe the means, I hold that if they do describe them, tell how the conspiracy was to be accomplished, they are bound by their description; they must prove such a conspiracy as they describe. If a man is indicted for stealing a horse and the color of the horse is given, it will not do to prove a horse of another color. If they describe the offence they are bound by the description.

Now, this is a conspiracy entered into, as they claim, by the persons mentioned in the indictment, to do a certain thing. What is the object of the conspiracy? To defraud the Government. And, gentlemen, I believe the Court will instruct you that the conspiring is the crime. The object of the conspiracy is to defraud the United States. What are the means? According to this indictment false petitions, false oaths, false letters, false orders. What I insist on is that the means cannot take the place of the object; that the means cannot take the place of the conspiracy described. When you describe a conspiracy by certain means to defraud the Government, and set out the means so that the Second Assistant Postmaster-General is a necessity, then you cannot turn and shift your ground, and say that it was not the conspiracy set out in the indictment, but that it was a conspiracy to do some of the things recited as means in the indictment; you cannot say that it was not a conspiracy entered into with the Second Assistant Postmaster-General, but was a conspiracy entered into with some others to make a false petition or a false affidavit. The ostrich of this prosecution will not be allowed to hide its head under the leaf of an affidavit. They must prove, in my judgment, the conspiracy that they describe in the indictment, and none other.

Now, what else? You must be prepared, gentlemen, when you make up a verdict, if you say that there was a conspiracy, to say when it was entered into and who entered into it. And I suppose when you retire, the first question for you to decide will be: Was there a conspiracy? Has any conspiracy been established beyond a reasonable doubt? If you say yes, then the next question for you to decide is, who conspired? Who were the members of that conspiracy?

After you do that there is one other thing you have to do: You have to find that one of the conspirators, for the

purpose of carrying the conspiracy into effect, did something; that is called an overt act. You have to find that at least one of them did something to effect the object of that conspiracy. You must remember, gentlemen, that the overt act must come after the conspiracy. In other words, you cannot commit an overt act and make a conspiracy to fit it; you must have the conspiracy first, and then do an overt act for the purpose of accomplishing the object of that conspiracy. The conspiracy must come first, and the overt act afterwards. You all understand that now.

Now, this indictment is so framed that the earliest time within the life of the statute of limitations for an overt act is the 23d day of May, 1879. Why? The indictment charges that as the day, the conspiracy was entered into. Any overt act in consequence of that conspiracy must have been done after the 23d of May, 1879. Now, get that in your heads, level and square. The conspiracy, according to this, is not back of the 23d of May, 1879, and any overt act done, in order to be considered an overt act, must be done after the date of that conspiracy. If they prove any act done before that time, it shows that it was not an overt act belonging to the conspiracy mentioned in the indictment. If it is an overt act at all, it is an overt act of another conspiracy entered into before the date mentioned in this indictment, and consequently will not do for an overt act in this case. Now, I want you all to understand that.

I forget how many overt acts are charged in this indictment; some sixty or seventy, I think. And understand me, now, gentlemen, no matter what date they fix to an overt act in the indictment, no matter whether there is any date to it or not in the indictment, if it turns out to have been done before the time fixed for the conspiracy it is dead as an overt act: it is good for nothing. The overt act is the fruit of the conspiracy; the conspiracy is not the

result of the overt act. Now let me make a statement to you, so that you will understand it.

Every petition, every letter, every affidavit, upon which orders for expedition were based, was filed before the 23d of May, 1879, except on two routes—Toquerville to Adairville and Eugene City to Bridge Creek. If that is true, then not a solitary petition filed in this case can be considered as an overt act; and a conspiracy without an overt act is nothing; it simply exists in the imagination; it is an agreement made of words and air, and never was vitalized with an act done by one of the conspirators for the purpose of giving it effect. Recollect that every petition, every affidavit, every letter filed, was filed before the 23d day of May, with the two exceptions I have mentioned. That is the date when the conspiracy came into being. And consequently an overt act must be after that time.

Now, when they came to write this indictment, why did they not tell the truth in it? I do not mean that in an offensive sense, because a man has the right to write in that indictment what he wants to. That is a matter of pleading. But why did they not tell the facts? Why did they put in the indictment that a certain petition was filed on the 26th day of June, when they had the petition before them and knew that it was filed in April, 1879? Why did they put in that indictment that a certain affidavit was filed on the 26th or 27th of May, I think it was, when they knew that it was filed in April or March? Why? Because if they had put that in the indictment the indictment would have been quashed, so far as their overt acts were concerned. The Court would have said, "I cannot allow you to put on paper that a man entered into a conspiracy on the 23d of May, and then did an act to carry that conspiracy into effect in April before that time. I cannot allow you to do that, because that is infinitely absurd, and pleadings have to be reasonable on their face." But you see

they stated that this was done after the conspiracy. They had to do it or they would be gone. I believe there is no dispute about this law that if they describe the overt act—and they must describe it, because it is a part of the offence—that is, the offence is not complete without it—they must prove it exactly as they describe it.

If they describe it with infinite minuteness, they must prove it with infinite minuteness. If they set out that an affidavit was written on bark, they must produce a bark affidavit. If they were foolish enough to say it was written in red ink they must produce it in red ink. If they allege that an oath was sworn to twice before two notaries public they must produce an oath sworn to twice. They are bound to prove exactly what they charge, and if they were too particular about it that is their fault, not ours.

I say that all these, with the exception of the two routes I have named, were filed too early to play any important part in this case. Now, I will come to those routes. Remember, that every overt act must be after the conspiracy. There are two exceptions, and those two exceptions include petitions and affidavits. And there is a splendid kind of justice in the way this thing is coming out, so far as that is concerned.

The petitions filed on the Toquerville route and on Bridge Creek route, I believe, are genuine; I believe the Government admits that they are honest; and they were not attacked except upon one point, and that was that a daily mail did not mean seven times a week. The point made by the Government was that a daily mail meant six trips a week—that is, where you have them every day. We took the ground that daily mail meant a mail every day, and that in the Western country, as here, they have seven days in a week.

We contended that you cannot have a daily mail without having seven trips a week. I think that was the

only point made against these petitions—that they were for a daily mail, and that somebody put in a figure 7.

No petition for increase of service alone was ever attacked by the Government in this case, except 25 L, on The Dalles route, and 20 H and 29 H, on the Canyon City route. 25 L was filed April 23, 1879. That was one month before the conspiracy had life. Consequently that is mustered out of this case as an overt act.

23 L was filed June 27, 1879, and is in time, provided it had been a dishonest petition. And it is the only petition filed on the date alleged in the indictment, and it was not attacked. It was signed by the business men of Baker City, and is set out, I believe, on page 1617.

20 H was filed May 7th. That is not in time. That is gone.

29 H has no file mark, and never was proved. So that goes.

All the allegations as to false petitions for increase of service—and by that I mean additional trips—are shown to have been genuine, honest, true petitions.

There are but two affidavits, one correctly described. Both were made by Peck. Mr. Bliss admits that Peck had nothing to do with any of these routes after April 1, 1879, and both of them were made by Peck, and were sworn to before that date.

The affidavit on the Toquerville route was filed by M. C. Rerdell, who swears that he was not in any conspiracy to defraud the United States; that he was not in a conspiracy with Vaile and Miner and John W. Dorsey, nor with anybody else. It was filed by the subcontractor of record, M. C. Rerdell, and it is the same route on which Mr. Rerdell, by virtue of his subcontract, appropriated about five thousand dollars of money belonging to other people.

The other exception is on the Bridge Creek route, and, strange as it may appear, that was also filed by Mr. Rerdell.

And, strange as it may appear, it has not been successfully impeached as to the men and horses necessary under the existing and proposed schedule. The overt act is not proved, because the oath is not proved to be false, and because Peck and Rerdell, according to Mr. Bliss's admission and according to Rerdell's oath, were not in the conspiracy, and the overt act has to be done by one of the conspirators, of course.

The COURT. I understood—I do not know whether I have been under a delusion all this time or not—that the indictment charged that these affidavits and false petitions were the means by which the conspiracy was to be carried into execution; that they were not the overt acts. If they had been set out as overt acts in the indictment, the Court would have seen that they antedated the time, and if an objection had been made to them the Court would not have received them as overt acts. The reason why they have been admitted and regarded as in the case all along, to my mind, was that they were acts tending to prove, so far as they tended to prove anything, the nature of the combination between these parties anterior to the 23d of May.

Mr. INGERSOLL. Before the conspiracy.

The COURT. Before the conspiracy. So that whatever character belonged to that association anterior to that time, if it was continued on after that time, carried out with overt acts done subsequently to that time, they were properly received as evidence going to establish the conspiracy—not as overt acts, but as means to show the character of the combination amongst the parties anterior to that date.

Mr. INGERSOLL. That saves me a great deal of argument. Now, I understand, gentlemen, that the Court will instruct you that you cannot take any petition, any letter, any oath, any paper of any kind that was filed or written or used prior to the 23d of May, 1879, as an overt act; that

all that that evidence is for is to show you the relation sustained by the parties before that time.

The COURT. Yes; you are right.

Mr. INGERSOLL. Now, that saves a great deal of trouble.

There are on the Toquerville and Adairville route, and on the Eugene City and Bridge Creek route, petitions filed after the 23d of May, 1879, set out in the indictment as overt acts. I shall insist, if the Court will allow me, that if there is no evidence that those petitions were dishonest, no evidence going to show that they were not genuine, those petitions cannot be used as overt acts for the reason that they are charged in the indictment as false and fraudulent petitions. So, gentlemen, I take that ground, that as to the petitions filed after the 23d day of May on the only two routes left for these gentlemen to find overt acts upon (Eugene City to Bridge Creek, and Toquerville to Adairville), if those petitions have not been proved to be false they cannot be regarded as overt acts for the reason that they were described in the indictment itself as false and fraudulent petitions. It is perfectly clear, is it not?

What else have we left? A couple of affidavits. Who made them? Mr. Peck. When? Before the 1st day of April, 1879, and Mr. Bliss admits that from that time on he never had anything to do with this business. Mr. Rerdell filed them, and Mr. Rerdell swears that he was never in any conspiracy; and Mr. Bliss admits that Peck, after the 1st of April, had nothing to do with this business. That substantially knocks the bottom out of that dish.

Now, they attacked the affidavit on the Bridge Creek route, but they did not succeed in showing that it was not an honest affidavit.

Now, gentlemen, after what the Court has decided I want to call your attention to another thing.

Do not forget what the Court has decided—that all these

things are not overt acts, but that they simply show the relations of the parties.

Now, if you go and find Vaile and Miner getting up petitions on their routes, and you also find Dorsey getting up petitions on his routes, then they claim that that is the result of an agreement between them. That is not the law. Neither is there in that the scintilla of common sense. If I find you plowing in your field and your neighbor plowing in his field, I have no right to draw the conclusion that you have conspired to plow or to help each other. But if I find your neighbor and you plowing in your field, and I afterwards find you and your neighbor plowing in his field, I have the right to conclude that you have swapped work and that you have something in common. If I find you plowing in your field and your neighbor walking behind you sowing grain or dropping corn, and then I find you in the fall shucking out the corn together, and I find your neighbor taking half of it to his barn and you taking half of it to your barn, I make up my mind that you have had some dealings on the corn question.

Now, we find that on May 5, 1879, these parties absolutely divided, and after that, when Vaile and Miner got up a petition on their route, Dorsey did not help them; and when Dorsey got up one on his, Vaile and Miner did not help him. That shows what the relations of the parties were. Does that show that they were then in a conspiracy? Does it show that they had any conspiracy before that time? They had separated their interest; they had ceased to act together; one did nothing for the other. If there had been a conspiracy before that time that conspiracy died on the 5th of May, 1879; and if it did, then there is no possibility of any conviction in this case, no matter what the evidence is—not the slightest.

Now, I want you to understand that ground exactly. I am not begging the question. I am not afraid to meet

every point, every paper, every scratch, in this case. But I want you to understand it. All those things were allowed for the purpose of showing the relations of the parties, the relations that the defendants sustained to each other; and the evidence is that they sustained no relations to each other after 1879; that each went his own road to attend to his own business in his own way. That is the evidence.

Now comes the next point. What are the overt acts in the indictment? Really they are the orders made by Mr. Brady, unless you take this poor little affidavit made by Peck and filed by Rerdell.

Then comes the next point. You cannot treat anything as an overt act unless it was made by one of the conspirators. Is there any evidence in this case that Mr. Brady ever conspired with anybody? Not the slightest. And unless he conspired with us any order made by him cannot be regarded as an overt act in this case. I think everybody will admit that. Unless Brady conspired with us, and we with him, any order of his cannot be regarded as an overt act.

I ask you, gentlemen, what evidence is there in this case that Mr. Brady ever conspired with any of these defendants? I will answer that question before I get through, and I think I will answer it to your entire satisfaction.

I will go a step further in this case, and I may go a little further than the Court will go. I say that when they state in that indictment that an order is made for the benefit of Miner, Vaile, and Dorsey, and the evidence is that it was made for the benefit only of Vaile and Miner, that is a fatal variance, and it cannot be treated as an overt act for any conspiracy. And when the indictment charges that an order was made for the benefit of S. W. Dorsey, and Vaile, and Miner, and it turns out that it was made for the

sole benefit of S. W. Dorsey, I claim that that is a fatal variance.

Gentlemen, I was going through all these overt acts and all these terrible false claims. But the decision of the Court has utterly and entirely relieved me from that duty. So I will turn my attention to another person.

The next defendant to whom I may call your attention is Mr. John W. Dorsey. It is claimed that John W. Dorsey was one of the original conspirators; that he helped to hatch and plot this terrible design. Let us see what interest John W. Dorsey had. You have heard me read the agreement he made, have you not, with Miner? Now, let me read to you the agreement that he made on the 16th day of August, 1878. Now, we will find out what interest John W. Dorsey had in all this conspiracy. On the 16th of August, 1878, there was no reason for telling any lie about it. They could not get on the routes in August, 1878; they had not the money, and so they took in Vaile. At that time, gentlemen, there was no reason for their writing anything in this paper that was not true, not the slightest. And I take it for granted that most people tell the truth when there is no possible object in telling anything else, if their memory is good:

4th. The profits accruing from the business shall be divided as follows: From routes in Indian Territory, Kansas, Nebraska, and Dakota, to H. M. Vaile, one-third.

To John R. Miner, one-sixth; to John M. Peck, one-sixth; and to John W. Dorsey, one-third.

From routes in Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, and California, to H. M. Vaile, one-third; to John R. Miner, one-third; to John M. Peck, one-third. [Page 4014.]

And to John W. Dorsey nothing. The entire interest of John W. Dorsey in the whole business was one-third of the profits on routes in the Indian Territory, Kansas, Nebraska, and Dakota. This was signed by H. M. Vaile,

John R. Miner, John M. Peck, and John W. Dorsey, and I believe these are all admitted to be the genuine signatures of the parties.

The only routes mentioned in this indictment in which John W. Dorsey on the 16th day of August, 1878, had any interest whatever were: Kearney to Kent in Nebraska, Vermillion to Sioux Falls in Dakota, and Bismarck to Tongue River in Dakota. Remember that, gentlemen. That is very important. The evidence is that he sold out his interest in the following December, made a bargain for ten thousand dollars, and the evidence is that he received the money, and the evidence is that after that he never had any interest in the profits, no matter how much was made. And yet these gentlemen say that he was part and parcel of a conspiracy formed on the 23d of May, 1879. Long before that time he had sold out every dollar's interest he had, and had no more interest in it than though he had never existed. He got his ten thousand dollars; that was all. Now let us see what he did when the routes were divided.

Mr. MERRICK. When did you say he sold out and got the money?

Mr. INGERSOLL. The bargain was made in December, and his brother wrote to him at first that Vaile would not give it to him, and then that he would. Don't you recollect the two letters you asked Dorsey so much about?

It had been agreed to once, and then after S. W. Dorsey came out of the Senate John W. Dorsey was paid ten thousand dollars, and Miner swears that the division was absolute, perfect, and complete; and that nothing was signed by one for the other after the 5th of May, 1879.

Mr. BLISS. Miner does not say when. He swore that he signed no papers after the 5th of May, 1879.

Mr. INGERSOLL. He says that he signed no papers for the other side, and that the other side signed none for Vaile and Miner.

Mr. DAVIDGE. You are talking of two different things.

Mr. INGERSOLL. I will show you after awhile that you are wrong, as I always do. I never made a mistake on you yet.

The only routes mentioned in this indictment in which John W. Dorsey on the 16th day of August, 1878, had any interest whatever were from Kearney to Kent, in Nebraska; Vermillion to Sioux Falls, in Dakota; and Bismarck to Tongue River, in Dakota. And I will say right here that if at any time I do injustice to Mr. Bliss or anybody else, if it is pointed out I will take it back cheerfully, and if it is not pointed out, and they show that I did it, I will get up and admit it and say that I was mistaken.

Mr. BLISS. You will have a great deal to admit.

Mr. INGERSOLL. Very well, I will do it, for I have the courage of conviction, and I have the courage to say that I am mistaken when I am.

Now, the evidence is that John W. Dorsey sold out his interest for ten thousand dollars, and that he received the money, and that after that he had no interest in the profits when the three routes were divided, and the only three were the ones I have mentioned.

On the first route, from Vermillion to Sioux Falls, John W. Dorsey was the subcontractor and he gave Mr. Vaile the entire pay for all increases and all expeditions. John W. Dorsey had the right to subcontract, and Mr. Vaile had the right to make the contract. The statement on page 726 shows simply that John W. Dorsey never drew a dollar upon that route. That is one route fairly and squarely disposed of. Understand, I cast no imputation upon Mr. Vaile for having the contract and for getting the money. When I come to it I will show you that he had a right to.

The next route is from Kearney to Kent. John W. Dorsey had an interest in that route, according to the agreement of August 16th, of one-third. You will see from page 726 of

the record that the first quarter John M. Peck got the money, two hundred and forty-five dollars and six cents. John W. Dorsey was entitled to one-third of that, if it was profit. The next quarter was paid on the 22d of January, 1879—that is, for the fourth quarter of 1878, and that was paid to H. M. Vaile. And never another solitary cent was paid to anybody in such a way that John W. Dorsey was entitled to any part or portion of it. That gets that route out of trouble, so far as John W. Dorsey was concerned, no matter what the increase may have been after that, no matter what the expedition was, no matter whether French carried it for nothing, no matter what happened to Cedarville or that city of Fitzalon; it was no interest to John W. Dorsey, no matter whether the road ran direct from Fitzalon to Cedarville or not. He was entitled to one-third of the profits on one payment to Peck, and that payment was two hundred and forty-five dollars and six cents; whether he ever got it I do not know.

Let us see how he came out on the next route, from Bismarck to Tongue River. He went out there to build stations. I will come to that in a little while. Now, I call attention to page 727. The third quarter from July 1 to September 30, 1878, was paid November 8, 1878, to H. M. Vaile. Never a solitary dollar on the route was paid to John W. Dorsey, according to this record, if you can rely on these books.

That is the state of the case on these three routes. And yet it is solemnly averred in the indictment that all the orders on these routes were made for the joint benefit of John W. Dorsey and others. Now, before another payment was made the division of the routes had been completed, and John W. Dorsey sold out his interest in these routes and all others for ten thousand dollars. So that he never received a dollar upon the Bismarck route and the Vermillion route except as it is included in the gross sum of ten thousand dollars which he received for his entire interest, and that

entire interest is described perfectly in the contract of August 16, 1878. Now, if John W. Dorsey had no interest in any route except as stated in the contract, of course nothing was done upon any other route for his benefit; nothing was done in which he, by any possibility, had the slightest pecuniary interest. How were the petitions filed for his benefit? How were the affidavits made for his benefit? How were the orders made for his benefit? He had no interest; he had parted with it, and had nothing more to do with it than the attorneys for the prosecution in this case.

It is claimed by Mr. Bliss that when John W. Dorsey sold out he agreed to make the necessary papers for the routes, and he tried to impress upon your minds the idea that the bargain was that John W. Dorsey knew that for ten thousand dollars he had to commit perjury and forgery and several other cheerful crimes, from time to time, as he might be called upon by the gentlemen who had been his co-conspirators.

J. W. Dorsey frankly and cheerfully swore that he agreed to make the necessary papers. He did not swear that he agreed to commit any frauds, perjuries, or forgeries. Nothing of the kind. He agreed to execute, of course, the necessary legal papers—the papers that, as contractor, were necessary for him to make to vest title of the route in the person to whom he had sold—just the necessary papers that would allow the man who had paid him for the route to draw the money from the Government if he performed the service.

Now, what were the papers? I say right here, gentlemen, that under the law as it was then, under the law as it is now, it is impossible for a contractor to assign his contract so as to be relieved from responsibility to the Government; the Government will not permit it. The Government will permit him to make a subcontract, and that is what John W. Dorsey did; that is one of the things he agreed to do. In order to make that subcontract absolutely

certain; in order to put it beyond his power to do anything with it, that subcontract was made for the entire pay, for the entire increase and expedition. And what more? In order to make that absolutely perfect, so they would not have a loop-hole anywhere, he signed blank drafts upon the Post-Office Department for the entire pay of every quarter during the contract term. And then, if they were fined—and nobody knew how much they would be fined—they had the right to fill up that order for the amount due them from the Post-Office Department after deducting fines.

He sold out in March, 1879. The regulation or order making it necessary for the contractor to make an oath as to additional stock and men was not in existence, was not a binding law or regulation, until the 1st day of July, 1879. When he sold out in March, unless he were gifted with prophecy, he would not know what the regulation of the 1st of July following would be.

Now, there were two affidavits made by John W. Dorsey on route 38134, Pueblo to Rosita. Around those affidavits Mr. Bliss hovered and Mr. Ker remained. John W. Dorsey testifies that he received one of those affidavits in the morning and swore to it, and that it was filled up when he swore to it. Mr. Bliss and Mr. Ker, I believe, both say that it was not filled up.

Mr. BLISS. Where does Mr. Dorsey say that it was filled up when he swore to it?

Mr. INGERSOLL. I have not the page here, but I will give it to you. He swore that a dozen times, that he never swore to any blank affidavits.

Mr. BLISS. I undertake to say that it cannot be found in his evidence.

The COURT. He testified that he received them both by mail, and that the second one was contained in a letter which said that there was an error in the first, and the second was sent for the purpose of correcting that error.

Mr. INGERSOLL. There could not have been any error in the first unless it had been filled up. You cannot make an error in blank. On page 4838, Mr. Rerdell swore that he left this city on the 17th or 18th of April for the West, and then he adds, "I think on the 18th." Then the Government brought the hotel-keepers from Sydney, Nebraska, and from Denver, and from some other place, nearly as many witnesses as you had about the paper pulp. And they proved that Rerdell was beyond the Missouri River on the 21st of April.

Now see what Mr. Bliss says on page 4914:

And yet, gentlemen, it is beyond dispute that as early as the 15th of April, 1879, Mr. Rerdell had left this city and gone West.

Why did he have it stated on the 15th, gentlemen? I will tell you. Oh, I tell you the human mind is a queer thing when it gets to working. John W. Dorsey was in Middlebury, Vermont; if a letter had been sent from here on the 15th, it certainly would have got up there before the 21st. So they wanted Rerdell out of this town as early as possible, so that it would make it highly improbable that it would take a letter from that time to the 21st to get to Middlebury. Now, the evidence is that he left here, he thinks, on the 18th. When did the letter get up there? I think the 20th or 21st.

Mr. DAVIDGE. There was a Sunday intervened.

Mr. INGERSOLL. They say, gentlemen, that there is no evidence that the blanks were filled, and yet John W. Dorsey swears that he received a letter stating that the first affidavit was erroneous, and the second one was sent to him to correct it. How would you correct one affidavit in blank by another affidavit in blank? How did he ever get those affidavits? I will tell you. We will have that little matter settled. Here is what Rerdell swears on page 2232:

Q. When did you return from that visit?—A. I returned about the 5th of May.

Q. State whether or not after you returned, you found blank affidavits among the papers connected with the business?—A. Yes, sir.

Q. How many did you find?—A. Well, there were several blank affidavits of John W. Dorsey's and several of John M. Peck's. I don't know how many there were.

Q. Were they blank affidavits?—A. Well, sir, they were blank affidavits similar to that one I sent, leaving out the number of men and animals in each case.

Q. Did they purport to have been sworn to?—A. Yes, sir.

Q. Were those affidavits among the papers when you left here to go West?—A. Some of them were. I think those of Peck's were here, probably four or five, or half a dozen, and I had made out, before I left here, a lot of them and sent them to John W. Dorsey. In the mean time, when I returned here, John W. Dorsey was here.

Mr. Rerdell swears that just before he went away he sent the affidavits to John W. Dorsey, and the only question between them is, were they in blank, or were they filled. John W. Dorsey swears that they were filled, because when he received the second he received a letter stating that there was an error in the first, and that error had been corrected in the second. The last nail in the coffin of that doctrine.

Mr. INGERSOLL. [Resuming.] May it please the Court and gentlemen of the jury, before finishing what I am about to say in regard to the two affidavits of John W. Dorsey, I will now call your attention to a statement made by Mr. Bliss, on page 304, in his opening speech to you:

> Mr. Dorsey, while Senator, was, I think, chairman of the Committee on Post-Offices, and chairman of the subcommittee in charge of all the appropriations. That brought him, of course, directly in connection with the Post-Office Department and its officials, and gave him, as we all understand, necessarily, from the nature of the case, the possession of some exceptional power over officials of the department —greater power than a Senator would have when occupying some other position.

That statement was made to you, gentlemen, for the purpose of making you believe that while Senator Dorsey was a member of the Senate he was also chairman of the Post-Office Committee, and of the subcommittee having power over the appropriations, and that he not only took advan-

tage of being a Senator, but by virtue of being chairman of that committee had exceptional power over the officials of the Post-Office Department. He was trying to convince you that, finding himself chairman of that committee, finding himself with this power, he thereupon entered into a conspiracy. What evidence did the Government offer upon that point? Nothing. Did Mr. Bliss at that time suppose that Mr. Dorsey was chairman of that committee? The records were all here. The Government had plenty of agents to ascertain what the fact was; and yet, without knowing the facts, Mr. Bliss stated to this jury that he believed that; that Dorsey was chairman of the Post-Office Committee and of the sub-committee; wanting to poison your minds with the idea that Mr. Dorsey had taken advantage of having held that position. Now, the only evidence upon that point I find on page 3992, and that is the evidence of Mr. Dorsey himself. He is asked, Were you a member of the Post-Office Committee in 1877? No. In 1878? No. Or chairman of the subcommittee? Here is what he says, that he had not been on that Post-Office Committee "for nearly two years" prior to July 1, 1878. And yet an attorney representing the United States, representing the greatness and honor, the grandeur and the glory of fifty millions of people, for the purpose of poisoning your minds, there made that statement without knowing anything about it or without caring anything about it. I thought I would clear that point up the first thing this morning.

Now we will go on with the affidavits. You know these terrible affidavits that were sworn to in Vermont. It was stated that the first affidavit was wrong and that the second affidavit was substituted for the first. Now, if the second affidavit took more money out of the Treasury than the first affidavit you might say that there was a sinister motive, a dishonest motive in withdrawing the first and substituting the second, unless it appeared clearly that the second was

true. But suppose it turns out that the substitution did not take an extra dollar from the United States? Then what motive do you say they had in doing it? Was it a motive to steal something, or was it a motive simply to be correct? What other motive could there have been?

Now, let us see. The first affidavit said three men and twelve animals; for the expedition, seven men and thirty-eight animals; and the proportion was exactly three hundred per cent—that is, three times as much. Now, then, they put in another affidavit. The second affidavit says two men and six animals. That makes eight. And on the expedited schedule six men and eighteen animals, which makes twenty-four; and three times eight are twenty-four; exactly the same. Three times fifteen are forty-five, and three times eight are twenty-four, and the amount of money drawn under the second affidavit is precisely the same that would have been drawn under the first affidavit.

Now, do you pretend to tell me that they took the trouble to withdraw the first affidavit and put in the second affidavit because they were trying to defraud somebody? On the contrary, they took that trouble because there was a mistake made in the first affidavit and they wanted to correct it, not for the purpose of getting more money, but for the purpose of getting a correct affidavit.

Mr. CRANE (foreman of the jury). Was not that first affidavit interlined?

Mr. INGERSOLL. No, sir.

If there had been any fraud about it, would they not have withdrawn the paper? They had a right to withdraw it. Yet they left the paper there; they left it there as a witness. Why? Because it did not prove anything against them; it only proved they desired to be correct.

My recollection is there were erasures in both affidavits. Let us find them. Before I get through I will endeavor to show you that every erasure and interlineation is an evi-

dence of honesty instead of dishonesty. What are the numbers of these affidavits? [Examing the papers.] They are number 4 C and 5 C. Route 38134. I will read them.

Hon. THOMAS J. BRADY,
*Second Assistant Postmaster-General:*

SIR: The number of men and animals necessary to carry the mail on route 38134 on the present schedule is three men and twelve animals. The number necessary on a schedule of ten hours, seven times a week, is seven men and thirty-eight animals.

Respectfully,
JOHN W. DORSEY,
*Subcontractor.*

There does not appear to be any erasure or interlineation or anything else in that affidavit. Now, here is the other one:

Hon. THOMAS J. BRADY,
*Second Assistant Postmaster-General:*

SIR: The number of men and animals necessary to carry the mails on route 38134 on the present schedule, seven times a week, is two men and six animals. The number necessary on the schedule of ten hours, seven times a week, is six men and eighteen animals.

Respectfully,
JOHN W. DORSEY,
*Subcontractor.*

That is the second affidavit. The first was withdrawn. That is, they had permission to withdraw it, and in the second affidavit is the interlineation "seven times a week," isn't it? That is simply an interlineation, because there had been an omission to state the service that was then being performed or that was to be performed.

Mr. CRANE (foreman of the jury). That has puzzled me a good deal, to understand the motive of those two affidavits.

Mr. INGERSOLL. There certainly could not be any motive for putting in seven or three times a week, for this is simply to make it agree with the truth. If I give a note to a man for five hundred dollars and should happen to write in the word "hundred" and not the word "five," and then

should take it back and write in the word "five" above it, that is not a sign of fraud.

Will somebody give me number 18 K; I just happened to see something there which may be worth something or may not.

Now, gentlemen, here is a petition marked 2 A, that Rerdell swears that the words "schedule thirteen hours" were written in by Miner. In one of these papers I happened to see the word "schedule." Just notice the word "schedule" on this paper [exhibiting to the jury,] and then have the kindness to look at the word "schedule" in this other one [exhibiting to the jury,] and see whether you think one man wrote them both. Rerdell says he wrote the word "schedule" in that one [indicating,] and that Miner wrote the word "schedule" in this other one [indicating.]

Now, gentlemen, there is another charge against John W. Dorsey, on route 38145, and upon that route he made two affidavits. In the first affidavit he swore it would require three men and seven animals on the schedule as it then was, and that makes ten; that with the proposed schedule it would take eleven men and twenty-six animals, making thirty-seven. Now, if it took ten on the schedule as it then was, and thirty-seven on the proposed schedule, then the Government, which accepted that affidavit, would have to pay him three times and seven-tenths as much, which is the relation between ten and thirty-seven. The proportion then is three and seven-tenths. On the first affidavit his pay would have been twelve thousand nine hundred and thirty-five dollars and fifty-two cents a year.

Now I come to the second affidavit, which said that for the schedule as it then stood it would take twenty men and animals. On the proposed schedule he said it would take twelve men and forty-two animals, making fifty-four. Now, the ratio of the second affidavit was as twenty is

to fifty-four. The ratio in the first affidavit was as ten is to thirty-seven, so that under the second affidavit, which they say was willful and corrupt perjury, he got eight thousand four hundred and fifty-seven dollars a year instead of twelve thousand nine hundred and thirty-five dollars and fifty-two cents. There were three years for the contract to run, and a little over. Under the first affidavit he would have received thirteen thousand nine hundred and ninety-two dollars and seventy-five cents during the contract term more than he took under the second. An affidavit was put in there that he thought was erroneous. He withdrew that affidavit and put in a second one. If he had allowed the first to remain and they had calculated the amount on the first he would have received thirteen thousand nine hundred and ninety-two dollars and seventy-five cents more than he did under the second affidavit. But he withdrew the first and put in the second, and took from the Treasury thirteen thousand nine hundred and ninety-two dollars and seventy-five cents less, and they charge that as a fraud, as an evidence of conspiracy and perjury. Now, that is all there is against John W. Dorsey.

On page 4090 John W. Dorsey swears that General Miles wanted to know how far apart he (Dorsey) was building the stations on the Tongue River and Bismarck route. Let us turn to page 4090. You know they were trying to prove that when John W. Dorsey went out there and built the ranches that he was going to build them about fifteen or seventeen miles apart, because it was claimed that they knew there was to be increase and expedition. You remember that. Now, when John W. Dorsey came upon the stand he swore that when they went out there they started to build those stations, I believe, somewhere in the neighborhood of thirty or thirty-five miles apart, as they could get water. Then he swore that when he went himself over, I think, to Miles City, where General Miles was, that

General Miles asked him how far he was building his stations apart. John W. Dorsey told him. Then General Miles gave him his advice. Now, I want to read this to you. I asked him this question:

Q. When you got to Fort Keogh did you go to see General Miles? —A. Yes, sir.

Q. Did you have any conversation with him in regard to this route, with regard to the needs of the country for mail service; and, if so, what was it? A. I told him all about the business generally. He seemed to understand it pretty well. He wanted to know how far apart we were building stations. I told him. He wanted to know how often the mails would run, and I told him it would be weekly service, I thought. "We have been pent up here two or three years," he says, "with mails from eighteen to twenty days apart, reaching us by the way of Ogden and Bozeman." And he says, "We can get it in seven or eight days over this line." And now I would like to say that he did not say that he knew there would be an increase, but he said he should like to have it increased to three trips a week, or daily, and fifty hours' time. I told him there was no use to try to get it at all; that it could not be done at present; that nobody knew the distance through that country; that we expected to have it measured; that it was claimed by everybody that it was a good deal more than two hundred and fifty and probably over three hundred miles, and nobody would undertake to carry it. Said I, "If you extend it the contractor can throw up his contract and you will be without any mail." He said, "We are going to ask for what we want, but we will take what they will give us."

"Your stations are too far apart; you can't run any fast time with your stations so far apart; you want more stations, and nearer together." The result was that when I went back I met Mr. Pennell, who had built the stations thirty to thirty-five miles apart, and going back we put in intermediate stations. We only carried out lumber enough from Bismarck to build eight or nine stations, for the windows, &c.; we did not think of building any more at that time. Mr. Pennell says the order was to build the stations seventeen to twenty miles apart in going out. That is no such thing. There was not a station built going out closer than thirty to thirty-five miles.

Q. What, if anything, did General Miles say that convinced you that you ought to build stations nearer together?

Then he testifies that on account of what he said he did this, and that he had no instructions from Washington.

That is the testimony. Mr. Bliss endeavored to frighten the witness by stating in his presence that he (Bliss) did not believe General Miles would swear to any such thing, judging, of course, from the conversation that he (Mr. Bliss) had had with General Miles. Notwithstanding that threat, John W. Dorsey, confident that he was telling the truth, knowing that he was telling the truth, told his story, and the Government never brought General Miles to contradict him.

Now, the next thing about John W. Dorsey is the conversation that he had with some men in July or August out on the road, that I have spoken to you about before. Nothing could be more perfectly improbable. It may be that he did tell some man that he was a brother of Senator Dorsey, and, perhaps, he did say that if he got into a tight place or hard up for money he could borrow money from his brother. I do not know what he may have said on that subject. But, gentlemen, there is not a man on this jury, not one of you, who has the slightest suspicion that John W. Dorsey at that time told those men substantially that his brother was in a conspiracy with the Second Assistant Postmaster-General, and that he, John W. Dorsey, was also a conspirator. There is not one of you who believes that, not one, and you never will. Why not? Because it is so utterly and infinitely unreasonable and absurd. Now, that is the evidence against John W. Dorsey. My attention is called to one other point in his case, and so I will call your attention to it.

Mr. Bliss, gentlemen, on page 243, in speaking of the two affidavits on the Pueblo and Rosita route, says:

> We find this extraordinary condition of things. On route 38134, from Pueblo to Rosita, which, I think, is the same route upon which the obliging Mr. John W. Dorsey, as I have just stated to you, was allowed to make the affidavit instead of Mr. Miner.

Now, he goes on to describe these two affidavits, and then he says:

> Those two affidavits were before Mr. Brady, made by John W. Dorsey on the same day, and yet Mr. Brady chose to pick out one or

the other of them and say, "I believe *that* as the absolutely conclusive statement of the number of men and animals that are now in use upon that route, and upon that affidavit I will make my order taking from the Treasury thousands of dollars of money." You will see that the first affidavit made the number two men and six animals, making eight as the number of stock and carriers then in use; but the other one called for three men and twelve animals, making fifteen as the number then in use, and, therefore, according as he accepted one or the other, by the rule of three, to which I called your attention just now, there would be twice the amount of money allowed from the Treasury under the one affidavit that there would be under the other.

Just think of that, gentlemen. The number of men and animals then in use has nothing to do with the number of men and animals stated in the other affidavit; those amounts bear no relation to each other. The number of men and animals in use in the first affidavit, and the number that would be necessary on the next schedule, do bear a relation to each other. The number of men and animals on the second affidavit on the then schedule bears relation to the proposed number on the proposed schedule, and not to the number on the other affidavit. And yet Mr. Bliss stood right before you, with those two affidavits that would take the same amount of money out of the Treasury, to a fraction, precisely the same—not the difference of the billionth part of a farthing—and stated to you that one would take twice as much money from the Treasury as the other. You will think that he is as defective in mathematics as in law. I say to you now that the amount that would be taken out of the Treasury on those two affidavits is precisely the same. I did not think that anybody could excel Mr. Ker in mathematics, but Mr. Bliss bears off the palm. He bears off the palm even in misstatement, and bears off the palm in mistake. The two affidavits would call for the same amount of money precisely, and yet Mr. Bliss stands up before you and says there is twice as much on one as the other. Now, what is that for? That is to prejudice you; that is all.

Gentlemen, you saw John W. Dorsey; you heard his testimony; you know whether he is a man to be believed. It is for you to judge whether he is honest or dishonest, and I leave his testimony with you. It was direct; it was to the point; and his manner on the stand was absolutely and perfectly honest.

Now, there is another point made. You know you have to think of these things as you can, and step on them and then go on. Another point is made, and it was urged by Mr. Bliss day after day. And what is that? That Mr. Brady took the affidavits of all these men as absolutely true; that he allowed them to fix the limit of the money they would take out of the Treasury; that he allowed interested men to make the affidavits, and then he took the affidavits as absolutely true; that he allowed the contractors themselves to fix the sum they would seize. Now let us see what that is. Mr. Brady swears that he regarded the affidavit as the honest opinion of the man who made it, but not as necessarily true; that he had a standard of his own. Your views upon all such questions, gentlemen, will depend upon which side of human nature you stand—whether you are a believer in total depravity, or whether you think there is a little virtue left in human nature. If you stand on the side of suspicion, if you allow the snake of prejudice to forever whisper in your ear, why, your idea will be that every man is a rascal; and whenever he does a decent action you will say, "This action is a little velvet in the paw for the purpose of covering the claw of some devilment that he has in store." If you judge from that side you can torture any act, no matter what it is, into evidence of guilt. But you may judge from the other side and say that men, as a rule, are decent; that they would rather do a kind act than a mean thing; that they would rather tell the truth than tell a lie. I tell you to-day that there is an immensity of good in human nature. There are hundreds and thou-

sands and millions of men to-day who are honest, who would not for anything stain the whiteness of their souls with a lie. They are laboring-men, it may be, working by the day for a dollar or a dollar and a half, and only taking enough of it to keep life and strength in their bodies and giving the rest to wife and child. And there are battles as grand as were ever won by a celebrated general, and just as bravely fought, with poverty day after day; and the man who fights the battles gains the victory and goes down to the grave with his manhood untarnished. You know it, and so do I. And yet you are all the time told to suspect everything, no matter what it is. There is a flower there; ah, but there is a snake under it! Always making that remark; accounting for every decent looking action by a base motive. That is not my view of human nature.

Now, Mr. Brady says that he had a standard of his own; that he let these men make their statements, and he took their statements as being what they believed to be the truth. And why not? Suppose I say to a man, "What will you take for that horse?" And the man says, "That horse is worth a hundred dollars." Suppose he goes and swears to it; that would not make any difference in the price I would give for the horse, not a bit. You see I am not buying an affidavit, I am buying a horse. So, when Brady says to the contractor, "What will you carry the mail at six miles an hour for?" and the man says "Twenty-five thousand dollars," and he swears to it, Brady is not buying the affidavit; it is the service. If he does not believe the service is worth that much, he says, "I can't do it," and that is all. But they say "No; that is not what Brady did."

Now, as a matter of fact, there are nineteen routes in this indictment, and I believe eighteen of them were expedited. I have made a calculation for the purpose of showing that the amount to be paid was a matter of bargain; that it was

a matter talked over between the parties; that it was the result of agreement, and that Mr. Brady did not take the affidavit as the actual amount, and that they were not bound to take the amount that he actually said. Now, I have deducted what *was* allowed from what *could have been* allowed on the affidavits, and I find that the price did not depend upon the affidavits. I find that there was a difference between the amount called for by the affidavits and the amount granted of over three hundred thousand dollars. And yet these gentlemen say to you that Brady allowed the men who made the affidavits absolutely to fix the amount. Gentlemen, that will not do. It was a matter of agreement, a matter of bargain, the same as any other agreement or any other bargain.

Now, gentlemen, suppose they had had a conspiracy and said, "We want to get all the money we can out of the Treasury." They would have agreed upon a per cent.; they would have had all those affidavits showing substantially the same per cent., wouldn't they? Because they would have wanted harmony in it. They would have said, "It won't do for you to make an affidavit on that route with one thousand two hundred per cent., on this route with five hundred, on that route with two hundred and twenty per cent., and on the other route with three hundred and forty per cent. That won't do; that is nonsense; we are in a conspiracy and we want all these things to agree and harmonize." And the result would have been that they would have had about the same per cent. in all those affidavits. And yet those affidavits vary in per cent. all the way from two hundred and twenty to one thousand two hundred. They say, "Result of conspiracy." I do not look at it in that way.

It is also claimed that the persons who sold out—that is to say, John M. Peck and John W. Dorsey—agreed to make the necessary papers that the other parties required. That

being so, why should not affidavits have been made in blank? Now, I ask you if the other parties were willing to swear to anything that these men would write, why were they made that way? Why not avoid the suspicious circumstance of blanks and put the amount in at first, knowing that the men would not hesitate to swear? Of what use was it, gentlemen, to have an affidavit suspiciously made, to have blanks suspiciously left, when the men were willing to swear to any numbers they would put in? Why did not the parties who made the affidavits write in the amounts? Does not that very fact, that blanks were left, show that they were to take the judgment of the men who were to do the swearing? Why would they leave blanks? Why did they not fill them up at the time and have them sworn to?

Why were they not continuously written? That is another point, if this was a conspiracy. Guilt is always conscious that it is guilty. Guilt is always suspecting detection. Guilt is infinitely suspicious. Guilt would make all the papers as nearly right as possible. Guilt would look out for erasures. Guilt would abhor blots. Guilt would have avoided having blanks filled in with different colored inks. Guilt would want everything fitting everything else, nothing to excite suspicion. Innocence is negligent. The man with honest intentions is the one that does not care. But the guilty man does not travel in the snow. He wants no tracks left.

Now, another thing: The fact that no effort was made to have the affidavits in the same handwriting, no effort to have the blanks apparently filled at the same time, that they were interlined, that there were erasures—all those things tend to show that the parties were honest in what they did. It was just as easy to have one without an erasure as with it; it was just as easy to have one continuously written as to have the blanks filled up; just as easy to have one without

any interlineations as with it. And yet these parties, knowing that they were conspirators (according to these gentlemen), Mr. Brady occupying a high and responsible position, were so careless of their reputations, that they did not even endeavor to make the papers passable upon their face.

Another thing: These very routes were investigated by Congress in 1878—this very business. If the parties at that time had been conscious of guilt, why were any suspicious papers left on file? Why were not others substituted that had no suspicious interlineations, no suspicious erasures, no suspicious blanks that had been filed? Why were these very affidavits at that time reported to Congress?

The first investigation was in 1878, and on account of that investigation the contractors for about a month and a half were left. Then there was another investigation in 1880.

Mr. MERRICK. Is there any evidence that they were all reported to Congress?

Mr. INGERSOLL. I think so; I think that is here in the record. I understand the evidence to be that it was all reported to Congress.

Mr. MERRICK. The investigation of 1880 was general, and not as to these particular routes.

Mr. INGERSOLL. In 1878 there was a special investigation growing out of these Clendenning bonds and out of the Peck bids, and out of the connection that they said Stephen W. Dorsey had with this business. That is what it grew out of. Now, in the light of that investigation, let us take it for granted for one moment that according to their statement the parties had conspired. If anything on earth would make them afraid about papers I think it would have been that investigation; and yet no effort was made to conceal one, not the slightest.

Then we will go another step. General Brady was Second Assistant Postmaster-General. All these papers were abso-

lutely in his power. He could have called for them at any time. Every suspicious paper could have been destroyed or an unsuspicious one substituted for it.

Now, I want to know if it is conceivable that General Brady, under these charges, when the new administration came in, under the threat of the Government, would voluntarily leave those papers upon the files if they had been dishonest and he knew it?

Take another step. So far as we have learned from the prosecution I believe there is one paper claimed by them to have been lost. They do claim that there was a second affidavit on the Bismarck and Tongue River route. One is gone and one remains. Which remains? The affidavit for one hundred and fifty men and one hundred and fifty horses. It seems to me absolutely capable of demonstration that we did not take the one that is gone. Had we been going to take anything we would have taken the one for one hundred and fifty men and one hundred and fifty horses, and left the other. But the other, about which nobody ever did complain, was taken, and the one upon which they build their great argument of fraud upon that route was left. And then it turned out that General Brady only allowed forty per cent. of that affidavit.

Now, this prosecution was not begun in a moment. It was talked about for weeks and months, I might almost say for years. Talk, talk, talk in the papers everywhere. These men were not suddenly charged with this offence. They understood it; they knew it. I think I have been engaged in this suit, or suits growing out of this business, for two years. It was a matter of slow growth. Mr. Brady retired, I believe, some time in April, 1881, knowing at that time that these charges had been made and that the charges were being pressed. Mr. Dorsey knew it at the same time. All these defendants knew it. Now they say that at that time we were in conspiracy with Mr. Brady, and they say

that at that time we were in conspiracy with Mr. Turner. We had the papers in our power.

Now, if Mr. Dorsey was wicked enough to conspire, if Mr. Brady was villainous enough to conspire, I ask you whether they would have left behind the evidence of their conspiracy? Why were the papers left? Because General Brady never dreamed that one of them was dishonest.

Why did not Vaile and Miner, John W. Dorsey and Peck and Stephen W. Dorsey ask for the papers? Because they believed every one to be honest, and they had no use for them. They were willing that the Government should make out of them what it could. I ask again, is it conceivable that John R. Miner, if he knew there was on the files of the department a petition that he had changed, that he had erased, that he had interlined or forged, is it conceivable, if he had been wicked enough to enter into the conspiracy, that he would have been foolish enough to leave the paper there? Would he not have gone to Brady and said to him, "I conspired; you know it; I changed the petition, and I want it; I erased a word in a petition, I want it; I signed a name to a petition, I want it"? And Brady would have said, "Yes, and you ought to have called for it long ago; you can have it." If S. W. Dorsey had interlined an affidavit or had filled a blank, if S. W. Dorsey had made an erasure or an interlineation, he, of course, must have known it, and if he conspired with Brady he must have known it, and he must have gone to General Brady and said, "I want that affidavit on such a route; we can write another, and I want that; I want that petition;" and it would have been given. You cannot conceive of such infinite stupidity as to say that those people knew that those papers were dishonest, and that they still left them on file as weapons for their enemies. You cannot do it.

So much, gentlemen, for the affidavits, and so much for the papers.

Now, there is another question, and I have no doubt that you have asked it yourselves. It has been asked a great many times by the prosecution. That question is this: Why did Dorsey retain Rerdell in his employ after the 20th of June, 1881? These gentleman tell you that it is evidence of guilt that he did it. I will tell you why he did it. At that time the public mind was almost infinitely excited on this question. At that time the public was ready to believe anything. It had its mouth wide open, like a young robin, ready for worms or shingle-nails—it made no difference—anything that dropped in. Every newspaper was charging that these defendants were guilty, that Stephen W. Dorsey was a conspirator, that millions had been taken from the Treasury, and there were nearly as many mistakes in the press then as in the speech of Mr. Bliss now. But I can excuse that, because it was before the evidence. Now, what was Mr. Dorsey to do in the then state of the public mind? That man, no matter how bad he was, how base he was, had the power to have him indicted. That man could have gone before the grand jury and had Mr. Dorsey or any other public man indicted in the then state of excitement and feeling of the public. What was the result of his going even to James and MacVeagh? I believe Mr. Turner says that on account of the statement of this man Rerdell, he (Turner) was turned out of his office. That is the effect. What became of McGrew? What became of Lilley? What became of Lake? What became of twenty or thirty other officials upon whose reputation this man had breathed the poison of slander? Stephen W. Dorsey at that time knew that that man in the then state of public excitement was powerful for mischief. That man made the affidavit of June, 1881, at the request of James W. Bosler, as he himself says, and swore that he went to the Government simply to find out the Government's secrets; swore that he was still upon the side of Stephen W. Dorsey; took back what he had said, and swore

that it was a lie. The question then was what to do with him? Stephen W. Dorsey made up his mind not to do anything more, just to let him alone, just let him stay as he was. That was the wise course. It was the course that any wise man, in my judgment, would have pursued under the circumstances. What else could he do? Let him alone. Let him alone. He did not at that time expect that he would ever be indicted. He shrank from an indictment, as every sensitive man does, because when you have indicted a man you have put a stain upon him that even the verdict of not guilty does not altogether remove. He did not want that stain. He was a man of power; he was a man of position, a man of social and political standing, a man wielding as much influence as any other one man in the United States. He did not wish to be indicted. He did not wish his reputation to be soiled and stained. And so he allowed that man to stay where he was. He may have made a mistake, but whether mistake or not, that is what he did.

There is another question. Why did we fail to produce our books and papers? I will tell you. The notice to produce them was given to us on the 13th day of February. We had noticed curious motions. Two days afterwards, Mr. Rerdell went on the stand. What did they want the books and papers for? For Mr. Rerdell to look at. Why did he want to look at the books and papers? To stake out his testimony. He hated to depend upon his memory. We took the responsibility of letting the witness swear to the contents of the books and papers, and let them call that secondary evidence. We took that responsibility rather than to furnish the books and papers to be looked at by that man in order that he might make no mistakes in his testimony. What happened afterwards justified our course. If we had shown to him the books and papers, and checks, and stubs, do you think he would have made any mistake about that seven thousand five hundred dollar check? Would he have

said that he went with Dorsey, and that Dorsev drew the money, and that he looked over his shoulder, and that then he and Dorsey walked down to the Post-Office Department, if he had known that that check was drawn to his order? If he had known before he swore, that he indorsed that check, he would have said he went down and got the money himself; he would not have said that Dorsey did. He would have made no mistakes there. He would not have been driven into the corner of saying "stub" or "stubs," "check-book" or "check-books," "amount" or "amounts." No, sir. And that one thing justified absolutely the wisdom of our course.

Then the Court decided that, having failed to produce our books on notice and allowed the other side to introduce secondary evidence of their contents, we would not be allowed then to produce them. I insisted that we had the right then to produce them, and the Court decided that we had not. We took the responsibility of refusing, and we took that responsibility because we made up our minds that we would not allow that man to look over the books, checks, and stubs for the purpose of manufacturing his testimony.

The COURT. Where did you offer to produce the books?

Mr. MERRICK. Where did you offer the production of the books? That is just what I was about to ask.

Mr. CARPENTER. The Court said we could not.

Mr. MERRICK. Where did you make the offer?

The COURT. I want to know.

Mr. CARPENTER. Mr. Ingersoll did not say he made the offer.

Mr. MERRICK. I think he did.

The COURT. I think he did.

Mr. CARPENTER. Just read it, Mr. Stenographer. He says nothing of the kind.

The STENOGRAPHER. (reading)

I insisted that we had the right then to produce them, and the Court decided that we had not.

Mr. INGERSOLL. That is exactly what I say.

The COURT. The Court did not give any intimation at that time, but after that point in the trial had passed, several days, several weeks, I think, the attention of the Court was called to this question, and the Court remarked, in the course of the opinion, that it understood the law to be that after a party, upon whom notice had been given to produce books, had failed to produce the books, and the other side had given secondary evidence, then the Court would not allow the party having the books to produce them for the purpose of contradicting the secondary evidence.

Mr. INGERSOLL. That is all I claim.

The COURT. But there was no such offer made, so far as I recollect.

Mr. INGERSOLL. Why should we make the offer after your Honor had decided that we could not do it?

Mr. MERRICK. I will answer the question. Because whether it would have been accepted or not was a question for the counsel for the Government when the offer was made. And again, the learned counsel will recollect that after the notice was given, when S. W. Dorsey was on the stand on cross-examination, I demanded those books and those stubs, and he asked leave to consult his counsel. The Court denied that request, and then there was a peremptory refusal to produce any book or any paper.

The COURT. Oh, yes. Mr. Ingersoll and Mr. Davidge repeatedly announced to the Court that they were not going to produce books to assist the prosecution.

Mr. INGERSOLL. Yes; I said that twenty times, and the Court, as I understood it, held that after we had refused to produce the books and driven the other party to secondary evidence, we could not then produce the books.

The COURT. You made no offer to produce the books.

Mr. INGERSOLL. I resisted the opinion of the Court and made the best argument I could, but the Court said that was not the law.

The COURT. The remark of the Court arose upon an argument on the part of Mr. Ingersoll, and if I am not mistaken, upon the effect of the refusal to produce the books and papers, Mr. Ingersoll contending that there was no presumption against his client on account of the refusal to produce the books and papers, and that the jury ought to be instructed that the only effect of refusing to produce the books and papers was to leave the case upon the secondary evidence.

Mr. INGERSOLL. I am not referring to that discussion, nor to that decision of your Honor; I am referring to the decision you made during the trial.

The COURT. That was the only occasion since this trial began, in which the Court referred to that rule of law which denied the right to introduce primary evidence for the purpose of contradicting the secondary evidence, after the primary evidence had been withheld in the first instance.

Mr. INGERSOLL. Of course, I am not absolutely certain, I never am; but I will endeavor to find in the record exactly what you said on that subject.

And now, in order that we may be perfectly correct, and in order to show, too, how easy it is to be mistaken, Mr. Merrick just said upon that very subject of the books and papers, that while Mr. Dorsey was upon the stand, he asked leave to consult his counsel. If Mr. Merrick will read the testimony he will find that Mr. Dorsey made that remark when he was asked about the affidavit of June 20, 1881.

Mr. MERRICK. You are right.

Mr. INGERSOLL. That just shows how easy it is to make a mistake when it comes to a matter of recollection.

Mr. MERRICK. I think it was upon a question of the insertion of the change in the character of the affidavit—its being addressed to the President; and when I asked him if he had not made that change he asked leave to consult his counsel. For the moment I thought it was upon the books. But the substance still remains, that, on the question of the books, I asked him on his cross-examination—and the counsel will state his recollection to be the same—about the stubs and the books, and called upon him to produce them, and the counsel replied, "We will not."

Mr. INGERSOLL. I presume I did. I made that reply a good many times.

Mr. MERRICK. Will the counsel be frank enough to state when that decision was made?

Mr. INGERSOLL. Which decision?

Mr. MERRICK. When he was on the stand on cross-examination.

Mr. INGERSOLL. And I said we would not produce them?

Mr. MERRICK. After the testimony in chief and Rerdell was gone.

Mr. INGERSOLL. Then I said we would not produce them. And now I will say that the decision of the Court was made before that time that we could not produce them, and if I do not show it then I will publicly take it back.

The COURT. I do not think you can show it.

Mr. INGERSOLL. If I do not, then I will beg your Honor's pardon, and if I do—if I do—

Now, I think what happened afterwards in this case with that very witness justifies the course that we pursued. He also stated at the time that we had, I believe, some twenty thousand pages of letters on all possible subjects to a great number of people. We knew that there was a spirit abroad—and some of it in a part of the prosecution—to find something against somebody else somewhere. We made up our minds that our private books and correspond-

ence never should be ransacked by this Department of Justice. We took the consequences, and we are willing to take them. We say that the inference from our refusal is an inference of fact, and must be decided by the jury, and is not an inference of law.

We have been asked a good many times why we did not put James W. Bosler on the stand. The prosecution subpœnaed Mr. Bosler. They appeared to have an affection for him. They subpœnaed him, and he came here. Afterwards they issued an attachment for him. They had him arrested at midnight and brought here. He gave some testimony, and you will find it on page 2611.

Mr. MERRICK. I do not know that there was an attachment.

Mr. INGERSOLL. You know you have a right to prove things by circumstances. Now, it is said that he put the marshal out of the house; I think that is evidence tending to show that an attachment was issued.

Mr. KER. And kept him out with a club.

The COURT. I understood also that Mr. Dorsey kicked somebody else out of his house about the same time.

Mr. INGERSOLL. Oh, yes; it has been a very lively term of court.

There were two very important things that they were to prove by Mr. Bosler, and they were patting him on the back here for weeks. Friendship sprang up between them. It was a very young plant at first, but the Bosler ivy grew upon the oak of the prosecution. I saw him sitting here, everything delightful. The prosecution, I hoped, began to flatter itself that Mr. Bosler was on their side; I hoped that was so. Finally they put Mr. Bosler on the stand. What did they want to prove by him? That Dorsey wrote a letter to him on the 13th of May, 1879, telling how much money he had given to Brady; that is one thing they wanted to prove by him. The second thing

was that Rerdell had written a letter to Bosler, I believe, on the 20th of May or 22d of May, 1880, stating that he (Rerdell) had been subpœnaed to go before the Congressional committee and take his books and papers; that he got very much frightened; that he had taken the advice of Brady and got a very valuable suggestion from Brady, which he was going to follow. They wanted to prove that by Mr. Bosler.

Rerdell had already sworn that Dorsey sent a letter to Bosler on the 13th of May, 1879. Rerdell had sworn to the contents of that letter; that the contents were that he had paid Brady so much money, &c., which you remember, and then that he, in 1880, had written a letter to Mr. Bosler, and I believe he pretended to have a copy of it. Now, here comes Bosler's testimony, on page 2611.

Q. Have you made a search among your papers to find a letter alleged to have been written to you by Stephen W. Dorsey, and dated on or about the 13th of May, 1879?—Yes, sir.

That is the letter that Rerdell swore about.

Q. Have you searched?—A. I have.

Q. Did you find it? –A. No, sir.

Q. Have you made search for a letter purporting to have been written by him to you, and dated on or about the 22d of May, 1880? —A. Yes, sir.

Q. Did you find that letter?—A. I did not.

The COURT: Was there ever such a letter?

Bosler replied: "There never was such a letter received by me."

There is the testimony of Mr. Bosler, and on that testimony the two letters of May 13, 1879, and May 22, 1880, turn to dust and ashes.

Now, they say, "Why didn't you put Bosler on?" Not much necessity of Mr. Bosler after that. And besides, gentlemen, I believe I will take you into my confidence just a little bit. The evidence of Rerdell as to the affidavit of June 20, 1881, and the affidavit of July 13, 1882 (an affi-

davit in which he swore that there was nothing against Mr. Bosler, an affidavit that was made apparently for the benefit of Bosler), all that evidence, the evidence of Mr. Stephen W. Dorsey upon those questions, advertised the prosecution that Mr. Bosler knew of many circumstances; that he was present a portion of the time, and I did not know but finally the prosecution would get so much confidence in Mr. Bosler that they would call him. I was hoping they would. They did not. It did not work quite as I expected. That is all there is about that.

Now, there is one further point to which I wish to call your attention. I want you to remember that a partnership is not a conspiracy, although all the facts about a partnership are consistent with the idea of a conspiracy up to a certain point; and all the facts about a conspiracy are consistent with a partnership up to a certain point. The fact that men act together does not show that they have conspired; does not show that they have a wicked design. The fact that they are engaged in the same business does not show that they have a wicked design or that they are there by conspiracy. In other words, I want your minds so that you will distinguish between a fact that may be innocent, and generally is innocent, and a fact that must be evidence of guilt. I want you to distinguish between the facts common to all partnerships, common to all agreements, and those facts that necessarily imply a criminal intent. If you wil do that gentlemen, you will have but little trouble.

[At this point a volume of the report of the trial was handed up to the Court by Mr. Ingersoll with a reference to a certain page].

The COURT. Without looking at the book I take risk of saying that the Court never announced its opinion on that question until the case referred to a few moments ago.

Mr. INGERSOLL. I just gave my memory on the sub-

ject. It does not make any great difference in this case, of course.

Mr. CARPENTER. This is during the cross-examination of Rerdell.

The COURT. Yes, the Court did state on that occasion:

That is not the point here. If they are allowed to go on and cross-examine this way without the production of the books, they cannot contradict the witness afterwards by producing the books.

I had forgotten that I had announced it twice.

Mr. INGERSOLL. If the Court please, I did not want to bring this up, because I knew you had, and so I thought I would slip you the book and let you off easy.

The COURT. I do not think it weakens the position at all that the same announcement has been made twice instead of once.

Mr. CARPENTER. We thought it made it stronger.

The COURT. Still, the books were not produced.

Mr. INGERSOLL. Now, if the Court please, I am not arguing——

The COURT. [Interposing.] I will leave you to the jury.

Mr. INGERSOLL. Your Honor knows that I have always shown great modesty about trying to do anything against any decision.

The COURT. I do not dispute that.

Mr. INGERSOLL. Now, the next question, gentlemen, is what is meant by corroboration? If you tell a man that he is not a great painter, he does not get angry. He says he does not pretend to paint, or is not a great sculptor. But if you tell him he has no logic, he loses his temper. Yet logic is perhaps the rarest quality of the human mind. There are thousands of painters and sculptors where there is one logician. A man swears, for instance, that he went down to a man's house in the morning at six o'clock, and that Mr. Thomas was standing just in front of the house, and when he went in the dog tried to bite him, and that

after he got in he had such and such conversation. Now, there are thousands of people who have brains of that quality that they think the fact that he did go there at six o'clock in the morning, and did see Mr. Thomas standing out in front of the house, and especially the fact that the dog did try to bite him, is a corroboration of the conversation that took place in the house. There are just such people. In this case, for instance, in Mr. Brady's matter, they say that the fact of Walsh being in his house is important. Suppose that he was, what of it? Is that corroboration? Corroboration must be on the very point in dispute. It must be the very hinge of the question. Then it is corroboration, if the question is what did the man say. It is not corroboration to prove that the man was there unless the man swears that he was not there. Then the inference is drawn that if he would lie about being there he might lie about what he said.

Now, understand me. They will say, for instance, "Here is an affidavit, and these blanks have been filled up. Rerdell says they were filled up, and he says they were filled up after they were sworn to." Now, the fact that the affidavit is there and that the blanks are filled up is not corroboration, because the point to be corroborated is that it was done after it was sworn to. And so the existence of the affidavit, while it is necessary, is no corroboration; the filling up of the blank is no corroboration; its being on file is no corroboration. Why? The point to be corroborated is not that the blanks were filled, but that they were filled after the paper had been sworn to! That is the point. And when they begin to talk to you about corroboration I want you to have it in your minds all the time that to be corroborated about an immaterial matter is nothing; it has nothing to do with the question; but there must be corroboration on the very heart of the point at issue!

There is another thing, gentlemen. It does not make

any difference what I say about this man, or that man, or the other man, unless there is reason in what I say. If I tell you that the evidence of a witness is not worthy of belief, I must tell you why. I must give you the reason. If I simply say the witness is a perjurer, that shows that I either underrate your sense, or have none of my own, because that is not calculated to convince any human mind one way or the other. You are not to take my statement; you are to take the evidence, and such reasons as I give, and only such as appeal to your good sense. If I say, "You must not believe that man," I must give you the reason why. If the reason I give is a good one, you will act upon it. If it is a bad one I cannot make it better by piling epithet upon epithet. There is no logic in abuse; there is no argument in an epithet.

And there is another thing. An attorney has a certain privilege; he is protected by the court. He is given almost absolute liberty of speech, and it is a privilege that he never should abuse. He should remember if he attacks a defendant, that the defendant cannot open his mouth. He should remember that it does not take as much courage to attack, as it does not to attack. He should remember, too, that by the use of epithets, by abuse, that he is appealing to the lowest and basest part of every juror's head and heart. It is on a low level. It is a fight with the club of a barbarian instead of with an intellectual cimeter. There is no logic in abuse. There is no argument in epithet. Remember that. The weight and worth of an argument is the effect it has upon an unprejudiced mind, and that is all it is worth. Therefore I do not want you, gentlemen, to be carried away by any assault that may be made—I do not say that any will be made—but any that may be made, that is not absolutely justified by the evidence.

There has been one little thing said during this trial; that is, about the testimony of defendants. I believe Mr.

Bliss takes the ground that you cannot believe a defendant; that defendants cannot be believed unless they are corroborated. Mr. Bliss has the kindness to put the defendants in this case on an equality with his witness Rerdell. Gentlemen, you cannot believe any witness unless his evidence is reasonable. Every witness has to be corroborated by the naturalness of his story. Every witness is to be corroborated by his manner upon the stand and by the thousand little indications that catch the eye of a juror or of a judge or of an attorney. Congress has passed a law allowing defendants to swear when they are put upon trial. Will you tell me that that law is a net, a snare, and a delusion, and the moment a defendant takes the stand the prosecution is to say, "Of course he will lie"? Why do they say that? Because he is a defendant, and you cannot believe a word that he says; he is swearing in his own behalf. There is that same low, slimy view of human nature again, that a defendant who swears in his own behalf must swear falsely. I do not take that view. The defendant has the same right upon the stand that anybody else has, and if his character is not good his character can be attacked; it can be impeached by the prosecution precisely as you would impeach the reputation of any other witness. If he tells a story which is reasonable you will believe it, and you will believe it notwithstanding he is a defendant and notwithstanding he has an interest in the verdict. In old times they would not allow a man to swear at all if he had the interest of a cent in any civil suit. They would not allow him to testify when he was on trial for his own liberty and his own life. That was barbarism. The enemy—the man who hated him—he could tell his story, but the man attacked, the man defending his own liberty and his own life, his mouth was closed and sealed. We have gotten over that barbarism in nearly all the States of this Union, and now we say, "Let every man tell his story: don't allow any avenue to truth

to be closed; let us hear all sides, and whatever is reasonable take as the truth, and what is unreasonable throw away." And, gentlemen, let me say here that it is not your business to go to work picking a witness's testimony all apart and saying, "Well, I guess there is a little scrap now that there is some truth in," or "here is a line, and I guess that is so, but the next eleven lines I do not believe; the next sentence, I think, will do." That is not the way to do. If a witness is of that character you must throw his entire evidence to the winds, for it is tainted and the fountains of justice should not be tainted with such evidence, and a verdict should not be touched and corrupted with such testimony. You will take the evidence of these defendants as you would take that of any other man, and it is for you to say whether that evidence is true. It is for you to say that.

If corroboration was so necessary why were not their witnesses corroborated? Why didn't they call Mr. Bosler to corroborate their witness?

Now, one of the defendants in this case is Mr. John R. Miner, and I want you to think of the terrible things they have against him. One of the charges made against him is that he wrote a petition and wrote in six names attached to it. His explanation is, that if he did anything of that kind it was because he received a petition which was so worn that it could not be presented, and he copied it, and that the six names were found on that petition. There was no other way on earth for him to get those names, and we find them on the same route in, I believe, seven other petitions which were filed; we find that those very names are on the other petitions, and I think Mr. Hall's name—the one the most trouble was made about—was on three or four petitions of the other kind.

Mr. CARPENTER. He admitted that he wrote them.

Mr. INGERSOLL. Yes; Hall admitted that he wrote them. But I believe this petition was never filed in the department.

I think Mr. Woodward said he found it among the papers at some other place.

There is a petition called the Utah petition that has some names in Utah. I think Mr. Woodward swore that he found it in room No. 22 or 23.

Mr. MERRICK. In the case itself, in the department.

Mr. INGERSOLL. Yes; but it has no file mark. Mr. Woodward says he does not now remember how it got in there. As I was about to remark, there was a petition called the Utah petition with some names of persons living off the route, I believe—two or three sheets. The petition itself was genuine, and was indorsed, I believe, by Senators Slater and Grover and by Congressman Whiteaker. Now, then, how did these names come in there? The petition is ample without those names; large enough. I will tell you what I think. I think that it is a part of another petition, and that it was the result of an accident. I think it was done in the Post-Office Department, not intentionally, but as an accident. The evidence is that they kept three routes in one pigeon-hole, and that the papers sometimes got mixed; that is Mr. Brewer's testimony. A very strange thing happened to that petition. While it was before this jury it came apart again. And if some clerk not absolutely familiar with the papers had taken it up, he would have been just as liable to put it on the wrong petition as on the right one. My plan is to account for a thing in some way consistent with evidence, if I naturally can. I do not go out of my way hunting for evidence of crime. And when there was a petition, large enough, with a plenty of genuine names on it, I cannot imagine anybody would go and get names from any other petition and paste them on to that. But being in this same country, and the testimony being that they had three of these routes in one pigeon-hole, my idea is that the papers got mixed and mingled sometimes, and I say the probability is that it was an accident. That is the best way to account

for it. If Miner had known that that petition was there that he had made, would he have allowed it to stay there? Why would he want to do such a thing if he was in a conspiracy with Brady? Why would he have to resort to perjury and interlineation in order to get Brady to make orders that he, Brady, had conspired to make? Absurdity cannot go beyond that. Here is the doctrine: "I have conspired with the Second Assistant Postmaster-General. He will do anything for me that I want. Now, I will go and forge some petitions." That seems to me perfectly idiotic. This petition was indorsed by Senators Grover and Slater and Congressman Whiteaker.

Then, there is another petition; that one I showed you this morning, with the words "schedule thirteen hours," and the evidence was (that is, if you call what Rerdell stated evidence) that Miner wrote the words "schedule thirteen hours." I have shown you, this morning, those words, and without any other particle of argument I want to leave it to you who wrote those words—whether Rerdell wrote them or Miner.

Then, there is another wonderful thing about that petition. It is not on any of the routes in this indictment, and has no business here—I mean the Ehrenberg petition. The one I spoke of was the Kearney and Kent.

The next petition is the Ehrenberg and Mineral Park. They say that there has been some word erased and another written in. Nobody pretends that it is not a genuine petition. Nobody pretends that it was not signed by every one of the persons by whom it purports to be signed. Then, another peculiarity; it is not on any route in this indictment, and has no more to do with this case than the last leaf of the Mormon Bible; not the least.

Let us see if they have any more of these terrible things. Here is petition 2 A, on the Kearney and Kent route. That is the petition that has the words "schedule thirteen hours."

That is the one indorsed by Senator Saunders. Petition 18 K, on the route from Ehrenberg to Mineral Park, is not a route in this case. It turned out that the names on it are genuine, and the genuineness of the petition has not been challenged. The only point made is that the word "Ehrenberg" has been written by somebody else. There is no evidence to show that the petition was not properly signed; that the persons on there did not sign their names or authorize somebody else to do it. The probability is there may have been some mistake in the name, or it may have been misspelled. There was some mistake made, and the word "Ehrenberg" was written in. On page 4186 Mr. Miner swears positively that in regard to the petition 2 A he never wrote the words "schedule thirteen hours."

Then, there is another petition, I think it is on page 1247, the Camp McDermitt petition. There are the words "ninety-six hours." And they get that down there to a fine point. Mr. Boone swore that he did not know who wrote the word "ninety," but that Miner wrote the word "six." Well, that is too fine a point, gentlemen, to put on handwriting. It seems there is an interlineation there of the words "ninety-six," and they say they do not know who wrote the word "ninety" and that Miner wrote the word "six." But Miner swears that he did not write it at all.

Now, then, you take away the evidence of Mr. Rerdell as to Miner, and what is left? The evidence left is that of A. W. Moore. And what is that? It is that Miner instructed him to get up false petitions. This was the first time he ever went out. But Moore swore that he made arrangements to do what Miner instructed him to do; that he made such arrangements with Major; but Major swears he did not. Moore swore that he made some arrangement with McBean, and the Government did not ask McBean whether he did or not, but I will show that he did not. The testimony shows that on the first trip, at the time he saw Major,

he did not see McBean. Now, just see. He swore, in the first place, that he made that arrangement with Major and McBean. I find afterwards that his evidence shows that he did not see McBean on the first trip, but he did see him on the second.

On page 1408 we find that when Moore went West the second time—when he left here and had made a bargain with Dorsey for one-quarter interest in his route, and Miner told him to go West and let Dorsey's routes go to the devil, and he said he would, and never notified Dorsey that he was going to do it—that man comes here now and swears that he made a contract with Dorsey for one-quarter interest, and then started West and made a contract with Miner, letting Dorsey's routes go. He did not have the decency to even notify Dorsey that he was going to do so. That is the man. On the first trip he did not agree with anybody about petitions. Now, understand my point, because it kills Mr. Moore again. We have to keep killing these people—keep killing them. It is something like the boy who was found pounding a woodchuck. He was pounding him away in the road with all his might, and a man came along and said to him, "What are you pounding that woodchuck for?" He said, "Oh, I am just pounding him." "But," the man said, "he is dead." "Yes, I know it," said the boy, "but I am pounding him to show him that there is punishment after death."

Now, on page 1408, we find that this man Moore went to the West a second time. I have shown you that the first time, he swears that he did not see McBean at all. He saw Major and made the arrangement with him, he says. Major swears that he did not. They do not put McBean on the stand. Now, he goes a second time.

On the second trip, he says he had nothing to do with the petition business at all, and did not explain the petition business to anybody because he had not the time, and

on the first trip did not see McBean at all. And yet he swears that he made an arrangement with McBean about these very petitions. The proof that he did not see McBean on his first trip is found on page 1398.

There is one other point about which we have heard an immensity of talk and upon which a great deal of air has been wasted, and that is, that there was a bargain that Brady was to have fifty per cent. of all the fines that he remitted. In other words, that he made a bargain with his co-conspirators that if he fined them a thousand dollars and then remitted it, that he was to have five hundred dollars or one-half of that fine. That is a nice bargain; for me to put myself in the power of a man and say, "Now, you fine me what you want to, and then if you will take it off, I will give you half of it." It seems to me that that would be quite an inducement for him to fine me. Yet, here is a man who makes a bargain that Brady may impose a fine upon them and that he may have half of it back—that is, upon their doctrine, although they have never proved it, but they state it just the same as though they had. But here are the facts. Here are the fines and deductions on twelve routes. The fines amount to eighty-nine thousand six hundred and thirty-eight dollars and twenty-two cents and the remissions amount to seven thousand four hundred and twenty-eight dollars and fifty-four cents; that is all. And yet they pretend that we had a bargain. Now, come to the mail routes, and we find that the fines amounted to sixty-one thousand two hundred and thirty-two dollars and twenty cents and all that they could get their co-conspirators to take off of that (although according to the doctrine of the prosecution they were to have fifty per cent.) was thirteen thousand eight hundred and fifty dollars and sixteen cents. That was all they could get off. There are the figures. There has been talk enough on that subject, but all the air that wraps the earth could not answer those

facts. Words enough to wear out all human lips could not change those facts. Fines eighty-nine thousand dollars, remissions seven thousand dollars; fines sixty-one thousand dollars, remissions thirteen thousand dollars. And yet they pretend that he had a bargain by which he had fifty per cent. of all he remitted. I need not make any more argument on that point.

There have been one or two things in this trial that I have regretted, and one I find in Mr. Ker's speech. And I find frequent reference to it in other places, and that is the blindness of S. W. Dorsey. Affidavits were made by Drs. Marmion, Bliss, and Sowers that Mr. Dorsey had lost at least eleven-twelfths of his vision. And yet it has been constantly thrown out to you that it was a ruse, a device, and I believe Mr. Ker said in his speech that Mr. Dorsey saw a paper in Mr. Merrick's hand, Mr. Merrick, I believe, holding a balance-sheet from the German-American Savings Bank—a paper several feet wide or long—and because Mr. Dorsey said to him, "I believe you have it in your hand," why they said this man is pretending to be blind. His testimony was that he had been in a dark room for three months; that his eyes had not been visited by one ray of light for three months, and that for six months he had not read a solitary word. And yet the prosecution sneeringly pretended that there was nothing the matter with his eyes They subpœnaed Dr. Marmion, but they dare not put him on the stand. They threw out hints and innuendoes that these doctors had sworn falsely, but they dare not put it to the test. It seems that nothing in the world can satisfy them about Stephen W. Dorsey except to see him convicted, except to have them put their feet upon his neck. Gentlemen, you never will enjoy that pleasure. You never will while the world swings in its orbit find twelve honest men to convict Stephen W. Dorsey—never. This Government may put forth its utmost power; it may spend every

dollar in its Treasury; it may hire all the ingenuity and brain of the country, and it can never find twelve men who will put Stephen W. Dorsey in the penitentiary—never, and you might as well give it up one time as another. Try it year after year; poison the mind of the entire public with the newspapers; get all the informers you can; bring all the witnesses you can find; put all of those whom you call accomplices on the stand, and I give you notice that it never can be done, and I want you to know it. Spend your millions, and you will end where you start. As long as the average man runs there will always be one or two honest men in a dozen; so you cannot convict one of these defendants. Go on, but it will never be accomplished.

There is one other thing which perhaps may be worth noticing. I believe that they proved by Mr. Dorsey that he wrote an account of his relation to this business, and published it in the *New York Herald.* The only point with which Mr. Merrick quarreled in that entire paper was the statement that Peck was a large contractor, and when Dorsey was put on the stand he explained that while Peck had not many routes in his own name, that he was the partner of a man named Chidester. That is the only thing of which he complained, and yet that communication pretended to tell the relation that Dorsey sustained to this entire business, and if that had not accorded precisely with Dorsey's testimony on the stand every word of it would have been read to you again and again. And Mr. Ker says that letter was written for the purpose of poisoning public opinion. Was the letter of the Attorney-General of the United States, written just before this trial began, written to bias public opinion also?

Mr. MERRICK. Is there any evidence of that letter in this trial? If not I object to any reference to it.

The COURT. You cannot refer to that, because it is not in the case.

Mr. INGERSOLL. I take it back. Was Dickson indicted to bias public opinion?

Mr. MERRICK. I object to that also. He was indicted by the grand jury on competent testimony.

The COURT. There is no evidence in this case that he was indicted.

Mr. INGERSOLL. I will take it back then. I would ask the Court, however, after the attorney for the Government has said that Dorsey wrote that letter to bias public opinion, if I have not the right to say that he wrote that letter because letters had been written by others.

Mr. MERRICK. Not unless those letters are in proof.

The COURT. The fact that he wrote the letter is in evidence in the case. That of course makes it the proper subject of comment on either side. Anything else not in evidence is not a subject of controversy.

Mr. INGERSOLL. I will take it for granted, however, that the jury understand what is going on in this case.

Mr. MERRICK. Yes, they understand the evidence.

Mr. INGERSOLL. I understand that the jury, as members of this community, as citizens of the United States, have at least a vague idea of what the Department of *Justice* has done.

It is also claimed, and has been claimed, and I have answered it again and again and again, that S. W. Dorsey is the chief conspirator. Why? Is it possible that it is because he was the chief man politically? Is it possible that any politician was envious of his place and power? Is it possible that any politician was envious of the influence he had with President Garfield? Is it possible that he had interfered with the career of some piece of mediocrity? Why is it that he is made the chief figure? These are questions that are asked and questions that you can answer. How does it happen that his name never figures in any division? That his name never figures in any paper

made in regard to this business? How does it happen that when he was contending with the German-American National Bank that he must be paid, how is it that it never occurred to Miner or Vaile to tell him, "Why, this is a conspiracy of your own hatching. You advanced this money to give life to your own bantling, and you have got to wait until the conspiracy bears fruit, and if you are not willing to wait you can do the next worse thing, have it made public"? If at that time, when he was opposing and fighting Vaile because he had cut out his security, Vaile had known that Dorsey was in the conspiracy, one word from him and Stephen W. Dorsey's mouth would have remained shut forever. But it did not occur to Miner, it did not occur to Vaile. That won't do. Why didn't Vaile say to him, "Mr. Dorsey, you are making a great deal of fuss about a few thousand dollars. You are in the Senate; you are interested in these routes, and I want to hear no more from you"? Why didn't he say it? Because it was not true; that is why.

Now, gentlemen, if what the prosecution claims is true, not only Stephen W. Dorsey, not only Thomas J. Brady, not only John R. Miner, not only H. M. Vaile, and John W. Dorsey are guilty of conspiracy, but hundreds and hundreds of other people. Do you believe it is possible that all the persons who petitioned for an increase of service, who petitioned for expedition—do you believe they were in a conspiracy? Do you believe they were dishonest men, and do you believe they asked for what they did not want? Do you believe that these defendants had at their beck and call the representatives of the entire great Northwest? Do you believe that members of Congress of the Lower House and of the Senate were their agents and tools? Was Senator Hill a conspirator? Was the present Secretary of the Interior a conspirator? Were Senator Grover and Senator Slater also conspirators? Were generals,

judges, district attorneys, members of State and Territorial Legislatures—were they all conspirators? Did they indorse false petitions for the purpose of putting money in the pockets of these defendants? Let us be honest. Do you believe that General Miles was a conspirator, or that General Sherman, whose title is next to that of the President, and whose name is one synonymous of victory, entered into a conspiracy? Do you believe that he knows as much about the mail business as Colonel Bliss? Do you believe that he knows as much about the wants of the great Northwest as the gentlemen who are prosecuting this case? Was he a conspirator with their Representative in Congress from Oregon? Was Horace F. Page a conspirator? These are questions, gentlemen, that you must answer. Were all these men, these officers of the Army, State officers, Federal officers, and men of national reputation—were they all engaged in a conspiracy; were they endeavoring to assist these defendants in plundering the Treasury of these United States? These are questions for you to ask and questions for you to answer. Is it not wonderful that such a conspiracy should have existed in all the Western States at one time?

Gentlemen, is it wonderful that all the people of the West want mails? Do you not know, and do I not know, that the mail is the substantial benefit we get from the General Government? Don't you know that the mail is the pioneer of civilization? Do you not know that there ought to be a mail wherever the flag floats? Do you not know that the only way to keep a great country like this together, a vast territory of three million square miles—three million five hundred thousand square miles—is by the free distribution of the mail? If you are going to keep the people who populate that territory together, if you are going to keep them of one heart and one mind, if you are going to make them keep step to this Union and to the pro-

gress of this nation, you must have frequent intercourse with them all. The telegraph must reach to the remotest hamlet; the little electric spark, freighted with intelligence and patriotism, must visit every home; and the newspaper and the letter, bearing words of love from home and news from abroad, must visit every house, so that every man, whether digging in the mine or working on the farm, may feel the throb and thrill of the great world, and be a citizen of a mighty nation instead of an ignorant provincial.

I am in favor of frequent mails everywhere, all over the plains, all through the mountains, everywhere, wherever the flag flies, I want the man who sits under it to feel that the Government has not forgotten him; that is what I want. I take pride in this country. I am one of the men who believe that there is only air enough in this entire continent to float one flag. I am one of the men who believe that it is the destiny of the United States to control every inch of soil from the Arctic to the Antarctic, and that when a nation loses its ambition to grow, increase, and expand it begins to die. And what right has a man who is carrying the mail to interfere with the policy of the Post-Office Department? These are large questions, gentlemen of the jury, and I want you to deal with them in a large and splendid American spirit. I want you to feel that we are citizens of the greatest Government on this globe. I want you to feel that here, to every man, no matter from what clime he may come, no matter of what people, no matter of what religion, the soil will give emolument, the sun will give its light and heat, the Government will give its protection. I like to feel that way about the Government. And yet, because the department adopted a splendid and generous policy, it is tortured into evidence of conspiracy.

Now let me speak just a moment about these people—the defendants in this case. First, there is Stephen W. Dorsey. I take a great interest in this case; I admit it. I would

rather lose my right hand than have you convict Stephen W. Dorsey. I admit it. I admit that if he were convicted I would lose confidence in trial by jury; I would believe that there were no twelve men in the world that had the honor and the manhood to stand by what they believed to be the evidence and the law. I would feel as though trial by jury was a failure. I admit I have that interest in it—all that anybody can have in any case. You can only convict that man by the testimony of A. W. Moore and M. C. Rerdell. That testimony withdrawn from the record and there is not one word against him. I want you to know and I want you to remember what kind of a man he is. You have seen him; you know him; and you know something of him. It is for you to decide whether you will take the testimony of Rerdell as against that man. It is for you to decide whether you will take the testimony of A. W. Moore as against that man. These men who are prosecuting him seem to forget who he is and what he has been. Yet men disgrace the position that Stephen W. Dorsey helped to give them, by attacking him.

John W. Dorsey can be convicted by the testimony of nobody. There is no testimony against him, except that of one man. He is an honest man. He told exactly what he did, and he told it like an honest man. He told why he did not put his money in the bank at Middlebury, Vermont, because they thought that he owed a debt which he did not think he owed. He need not have told it, but he is an honest man, and that is the reason he told it. The prosecution does not appreciate that kind of man, that is, they say they do not.

The only witnesses against Miner are Rerdell and Moore, and they being dead, that is the end of it.

What evidence is there against Harvey M. Vaile? One witness, Mr. Rerdell. What did Harvey M. Vaile do? At the solicitation of Mr. Miner he advanced money to prevent

his having a failing contract. What else did he do? He wrote a letter saying that he was trustee for S. W. Dorsey, and he was, because the concern owed S. W. Dorsey a few thousand dollars, and agreed out of the profits to repay Stephen W. Dorsey. That is all. That is all. You have seen Mr. Vaile here from day to day. You know that he is a man of mind. I think he is an honest man. I think he testified to the exact truth. He did what any other man had the right to do, he helped a man, not entirely from charity, but believing after all that it might be a good investment, as you have done if you have ever had the opportunity. And there is not the slightest scintilla of evidence against him, not the slightest. I believe every word that he testified, and so do you.

And then they come to Thomas J. Brady, and they tell you that that man is to be convicted upon the testimony of whom? Mr. Walsh. And who else? Mr. Rerdell. You have some idea of human nature. You have a little and I have a little. Here is Mr. Walsh, an athlete; a man who, had he lived in Rome in ancient times, might have been a gladiator. He loans Mr. Brady twenty-five thousand or thirty thousand dollars. For some of this money he has notes, for other portions he has not. He sends word to Brady that he would like to fix the interest. He goes there and Brady takes these notes and puts them in his pocket and they part as philosophers. If we believe that, we must believe it as idiots. You do not believe it. You do not believe any man ever allowed another to take twenty-five thousand dollars in notes belonging to him and put them in his pocket and walk off, he taking off his hat at the door and you bowing and wishing him a happy voyage. My mind is so constructed that I cannot believe that; I cannot help it. I imagine your minds are built a little after the same model. I do not believe the story; you do not.

Who is the next witness against Mr. Brady? Mr. Rerdell.

It is sufficient for me to speak the name. I need argue no further. That is enough. You saw Mr. Brady on the stand and you heard him give his testimony. No man could listen to it without knowing it to be true. I say now to each one of you that when you heard it you believed it, and every one of you believed it was the truth. Take from this record the testimony of Rerdell, Walsh, and Moore, and what is left? Some papers, petitions, orders, affidavits, all made, signed and filed in the cloudless light of day. That is all that is left. Where is your conspiracy? Faded into thin air, nothing left.

I presume it will be said by the prosecution that I spent about three days on Mr. Rerdell. I admit it. Why? Because I regarded Rerdell as your case. Because I made up my mind that when I killed Rerdell the case had breathed its last. That is the reason. And had it been necessary to spend a few weeks more I should have done so. But it is not necessary. Probably I wasted a great deal of time upon the subject, but if he is not dead I do not want it in the power of any human being to say that it was my fault. I went at him with intent to kill, and I kept at him after I knew that he was dead. I admit it.

Now, gentlemen, let us see what I have proved. Let us see what up to this time I have substantiated in my judgment.

First, I think I have shown that John W. Dorsey, John M. Peck, and John R. Miner agreed in 1877, to go into the mail business. That Peck wrote a letter to Stephen W. Dorsey, who was then a United States Senator, asking him to get some competent man to get reliable information as to the cost of service on routes in the Western States and Territories then advertised by the General Government. That S. W. Dorsey gave that letter to A. E. Boone. That he told him to say nothing about it to other contractors. That Boone sent out circulars for the purpose of getting the

requisite information; that is, the cost of corn and oats and the wages of men.

That John R. Miner came to Washington on the 1st of December, 1877. That he went to the house of Stephen W. Dorsey, as had been the custom for several years. That he occupied a room in that house, and that he and Mr. Boone went on with the business of making proposals and getting up forms of contracts.

That John W. Dorsey came here in the early part of January, 1878. That after his arrival the partnership was formed between him and A. E. Boone, and that the partnership was dated the 15th day of January, 1878.

That S. W. Dorsey, at the request of his brother and brother-in-law, advanced the amount of money necessary to pay incidental expenses. That he gave his advice whenever it was asked. That he assisted the parties all that he conveniently could.

That the last bids or proposals were put in by these parties on the 2d of February, 1878. That the awards were made on the 15th day of March of the same year. That Miner, Peck, Dorsey, and Boone received about five times as many awards as they had anticipated. Thereupon another partnership was formed with the style of Miner, Peck & Co., and that the partners in this firm were John R. Miner, John M. Peck, and John W. Dorsey. That thereupon John W. Dorsey and John R. Miner went West for the purpose of subcontracting the routes. That John R. Miner on his return from the West met Stephen W. Dorsey at Saint Louis about the 16th of July, 1878. That Stephen W. Dorsey up to that time had advanced eight thousand or nine thousand dollars. That he then gave to Mr. Miner notes amounting to about eight thousand five hundred dollars to be by him discounted at the German-American National Bank of Washington. That Stephen W. Dorsey then told Miner that he would advance no more

and would indorse no more. That Stephen W. Dorsey went from Saint Louis to New Mexico; that John R. Miner came to the city of Washington, arriving here about the 20th of July. That John R. Miner then found that service in eastern Oregon was not in operation, although it had been subcontracted; but he then applied to Thomas J. Brady for an extension of time. That Brady refused to give it. That Miner, Peck & Co. had not the money to stock the routes not then in operation, and that Stephen W. Dorsey had refused to advance further means. That John W. Dorsey was then in the West and that John M. Peck was then in New Mexico. That thereupon Mr. Miner applied to Harvey M. Vaile, and thatMr. Vaile went to Mr. Brady and asked whether an extension of time could be given, provided he undertook to put the service on those routes. That Brady then gave him until the 16th day of August, 1878. That thereupon Miner, under the authority of powers of attorney from John M. Peck and John W. Dorsey, agreed upon the terms on which H. M. Vaile should advance the money necessary to put the service in operation.

That the contract bears date the 16th day of August, 1878, and was duly executed by all the parties on the last of September or first of October of that year.

That the service was not in operation by the 16th of August, and that in August, Brady telegraphed to H. M. Vaile to know what routes he was going to put service on.

That thereupon Vaile replied that he would see that all the service of Miner, Peck, and Dorsey was put in operation. That through the assistance of Mr. Vaile the service was put in operation.

That before that time Stephen W. Dorsey had been secured by Miner, Peck, and John W. Dorsey executing Post-Office drafts upon the routes that had been awarded to them.

That on the 17th day of May, 1878, an act was passed by

the Congress of the United States allowing subcontractors to place their subcontracts on file.

That after Vaile came in and agreed to furnish the money necessary to put the service in operation, John R. Miner having powers of attorney from Peck and John W. Dorsey, executed to H. M. Vaile subcontracts for the purpose of securing him for the money he had advanced.

That H. M. Vaile put these subcontracts on file, thus cutting out and rendering worthless as security the Post-Office drafts that had been given to S. W. Dorsey for the purpose of securing him.

That John W. Dorsey returned from the Bismarck and Tongue River route in November, 1878, and that he then offered to sell out his entire interest in the business to Vaile for ten thousand dollars, and left instructions authorizing his brother, S. W. Dorsey, to make such sale for such amount. That John W. Dorsey then returned to the Tongue River route.

That Stephen W. Dorsey returned to Washington in December, 1878, and for the first time found that the subcontracts had been given to Vaile. That he and Mr. Vaile had a quarrel with the German-American National Bank on that question.

That afterwards Dorsey was to give ten thousand dollars to John W. Dorsey, and ten thousand dollars to John M. Peck. That he then concluded not to do so.

That on the 4th day of March, when S. W. Dorsey's Senatorial term expired, he immediately wrote a letter to Brady insisting that the subcontracts that had been filed by Vaile were in fraud of his rights. That thereupon the parties in interest came together. That S. W. Dorsey acting for Peck, his brother, and himself agreed with Vaile and Miner to a division of the routes.

That S. W. Dorsey paid Peck ten thousand dollars for his interest, paid John W. Dorsey ten thousand dollars for his

interest, and took substantially thirty per cent. of the routes and paid himself the money that was owing to him by Miner, Peck & Co.

That the parties at the time executed to each other subcontracts and such other papers as were necessary to vest, as far as they then under the law could vest, the routes so divided in the parties to whom they fell.

That on the 5th of May, 1879, the division was completed, and that from that time forward Vaile and Miner had no interest in the routes that fell to Stephen W. Dorsey, and that from that time forward Stephen W. Dorsey had no interest in the routes that fell to Vaile and Miner, and that John W. Dorsey and John M. Peck had no interest in any route from that date forward until the present moment. That S. W. Dorsey took entire and absolute control of his routes, and that Miner and Vaile took entire control of their routes. That from that time until the present neither party interfered with the routes of the other.

That Vaile and Miner made no paper of any sort, character, or kind for Stephen W. Dorsey after the 5th of May, 1879, and that neither John W. Dorsey, nor John M. Peck, made any papers of any kind, sort or character for Miner or Vaile after that date, no matter what date papers bear that were made before that time. That S. W. Dorsey made no papers for Miner or Vaile after that date. And that Miner and Vaile made no papers for S. W. Dorsey after that date, May 5, 1879. That all the papers bearing date after the 5th of May, were in fact signed by the parties at or before that time. That they were so signed for the purpose of making the division complete.

That Vaile and Miner on their routes got up petitions that they had a right to do. That S. W. Dorsey upon his routes got up petitions, as he had a right to do.

That the routes were increased and expedited by the Second Assistant Postmaster-General in accordance with

the policy of the department and in accordance with the petitions filed and the affidavits made, as he had a right to do.

That it was not for the contractors to settle the policy of the Post-Office Department.

That the evidence of A. W. Moore is unworthy of belief, and that his statement that he settled with S. W. Dorsey is demonstrated to be false by the receipts that he afterwards gave in final settlement to John R. Miner, as admitted by himself. That his testimony as to the existence of a conspiracy is rendered worthless and absurd by the fact that he sold out not only his interest, but his services up to that time, for six hundred and eighty-two dollars. That his conversations with Miner could not have taken place. That he never made or offered to make such contracts with Major as he pretended he was instructed to make, and as he swore that he did make. That his conversation with S. W. Dorsey never occurred.

That the testimony of Rerdell is utterly and infinitely unworthy of credit. That he is not only contradicted by all the evidence, but by himself, and how can you corroborate a man who tells no truth? There must be something to be corroborated.

That the red books never existed.

That the pencil memorandum was forged by himself.

That the Chico letter was written by him.

And that the letter from Dorsey to Bosler, said to have been dated May 13, 1879, was born of the imagination of Mr. Rerdell.

That Rerdell's letter to Bosler of the 22d of May, 1880, was never sent, was never received, and was never written until after this man made up his mind to become a witness for the Government. That Bosler never received that letter, or the letter pretended to have been written by Dorsey on the 13th of May, 1879.

That the tabular statement in which thirty-three and one-third per cent. was allowed to Brady never existed. That Rerdell did not visit Dorsey's office in New York in June, 1881, and that he had no conversation with Torrey. That Rerdell was not there. That he did not have the conversation detailed by him with Dorsey at the Albermarle Hotel. That Dorsey did not write the letter of the 13th of June, 1881.

That Rerdell swore in June, 1881, that Dorsey was entirely innocent. That he swore to three affidavits of the same kind. That he again swore to the same thing on the 13th of July, 1882. That he admitted by his letter of July 5, 1882, that S. W. Dorsey did not even ask him to make the affidavit of June, 1881, but that he was persuaded to do it by James W. Bosler. That he was not locked up at Willard's Hotel. That he was not threatened with a prosecution for perjury. That he was not shown the letters he had written to a woman. That the whole story with regard to the making of that affidavit was utterly and unqualifiedly false. That he never had the conversation with Thomas J. Brady that he claimed. That Brady never suggested to to him to have any books copied. That there were no books of Dorsey's that needed to be copied. That he did not see S. W. Dorsey draw any money at Middleton's bank at the time he states. That he, Rerdell, drew the money himself. And that his entire testimony is absurd, contradictory, and utterly unworthy of credit.

Let me say another thing to you, gentlemen, right here. It would be better a thousand times that all the defendants tried in the next hundred years should escape punishment than that one man should be convicted upon the evidence of a man like this—a man who offered to the Government to make a bargain while the trial was in progress, that he would challenge from the jury all the friends of the defendants, and help the Government to get the enemies of

the defendants upon the jury. You never can afford to take the evidence of such a man. It turns a court-house into a den of wild beasts. You cannot do it.

I have shown that the story of Walsh is improbable, and that all that Boone swears against these defendants cannot be believed. That Walsh never loaned the money to Brady that he claimed, and that Brady never took from him the notes as he says. That Brady never made in his presence the admissions that he swears to. Think of it; Brady robbing Walsh, and at the same time saying to Walsh, "I am a thief and public robber."

I have shown to you, gentlemen, it seems to me, that no reasonable human being, taking all this evidence into consideration, can base upon it a verdict of guilty. It cannot be done.

Now, gentlemen, the responsibility is upon you, and what is that responsibility? You are to decide a question involving all that these defendants are. You are to decide a question involving all that these defendants hope to be. Their fate is in your hands. Everything they love, everything they hold dear, is in your power. With this fearful responsibility upon you, you have no right to listen to the whispers of suspicion. You have no right to be guided or influenced by prejudice. You have no right to act from fear. You must act with absolute and perfect honesty. You must beware of prejudice. You must beware of taking anything into consideration except the sworn testimony in this case. You must not be controlled by the last word instead of by the last argument! You must not be controlled by the last epithet instead of by the last fact. You must give to every argument, whether made by defendant or prosecution, its full and honest weight. You must put the evidence in the scales of your judgment,and your manhood must stand at the scales, and then you must have the courage to tell which side goes down and which side rises.

That is all we ask. We ask the mercy of an honest verdict, and of your honest opinion. We ask the mercy of a verdict born of your courage, a verdict born of your sense of justice, a verdict born of your manhood, remembering that you are the peers of any in the world. And it is for you to say, gentlemen, whether these defendants are worthy to live among their fellow-citizens; whether they shall be taken from the sunshine and from the free air, and whether they are worthy to be men among men.

It is for you to say whether they are to be taken from their homes, from their pursuits, from their wives, from their children. That responsibility rests upon you.

It is for you to say whether they shall be clothed in dishonor, whether they shall be clad in shame, whether their day of life shall set without a star in all the future's sky; that is for you.

It is for you to say whether Stephen W. Dorsey, John W. Dorsey, John R. Miner, Thomas J. Brady, and H. M. Vaile shall be branded as criminals.

It is for you to say, after they have suffered what they have, after they have been pursued by this Government as no defendants were ever pursued before, whether they shall be branded as criminals.

It is for you to say whether their homes shall be blasted and blackened by the lightning of a false verdict.

It is for you to say whether there shall be left to these defendants and to those they love, a future of agony, of grief and tears. Nothing beneath the stars of heaven is so profoundly sad as the wreck of a human being. Nothing is so profoundly mournful as a home that has been covered with shame—a wife that is worse than widowed—children worse than orphaned. Nothing in this world is so infinitely sad as a verdict that will cast a stain upon children yet unborn.

It is for you to say, gentlemen, whether there shall be

such a verdict, or whether there shall be a verdict in accordance with the evidence and in accordance with law.

And let me say right here that I believe the attorneys for the prosecution, eager as they are in the chase, excited with the hunt, after the sober second thought, would be a thousand times better pleased with a verdict of not guilty. Of course they want victory. They want to put in their cap the little feather of success, and they want you to give in the scales of your judgment greater weight to that feather than to the homes and wives and children of these defendants. Do not do it. Do not do it.

I want a verdict in accordance with the evidence. I want a verdict in accordance with the law. I want a verdict that will relieve my clients from the agony of two years. I want a verdict that will drive the darkness from the heart of the wife. I want a verdict that will take the cloud of agony from the roof and the home. I want a verdict that will fill the coming days and nights with joy. I want a verdict that, like a splendid flower, will fill the future of their lives with a sense of thankfulness and gratitude to you, gentlemen, one and all.

The COURT. Let me inquire of the counsel for the defence if there are to be any other arguments upon their side?

Mr. HENKLE. May it please your Honor, inasmuch as I alone represent two of the defendants, it is perhaps due to this jury and to myself to explain why I do not propose to argue the case. I had prepared myself, with a good deal of labor and painstaking, to submit an argument to the jury.

But after the exhaustive and able argument of my Brother Wilson, I and my colleagues were of the opinion that there was room but for one more argument on the part of the defence, and with entire unanimity we selected our colleague, Brother Ingersoll, to make that argu-

ment. And how grandly he has justified the choice, the jury, your Honor, and the spectators will determine.

I saw some time ago a little paragraph in a paper in this city, which represents the interest of the Government, in which it was said that the defendants' counsel were afraid to argue this case because they would come in collision with each other; that each would try to throw the conspiracy at the door of the others and exonerate himself, and that therefore they were afraid to argue the case. I want to say to your Honor that so far from being afraid to argue the case, I should have been very happy to pursue the argument, so far as I am concerned. But out of tender consideration to the jury, who have been kept for six long months from their business and their interests, which I know are suffering, we have unanimously concluded that we would close the argument with that which your Honor has just heard. And I simply want to say further, that I not only do not antagonize with anything that has been said by my Brother Wilson, or by my eloquent friend who has just concluded, but I indorse most fully and cordially every word that has been uttered. And so far as my clients are concerned, gentlemen of the jury, the case is with you.

Mr. DAVIDGE. May it please your Honor, perhaps I ought to add a single word. It was understood among counsel when Colonel Ingersoll, as stated by General Henkle, was unanimously selected to represent the defendants, that both Colonel Ingersoll and myself should have the privilege of addressing the jury if, in the judgment of either, it should be necessary. I have felt such a deep interest in the present case that I have almost hoped he might leave unoccupied some portion of the field of argument. I have listened to every word that has fallen from his lips. He has filled the whole area of the case with such matchless ability and eloquence that I have no ground upon which I could stand in making any further argu-

ment. He has so fully uncovered the origin of this so-called prosecution, its methods, and the character and weight of the evidence upon which a conviction is sought, that I can add nothing whatever to what he has said. I need not add that every syllable he has uttered receives my grateful indorsement, as well as that of all the defendants and their counsel in this case.*

* Twelve jury men decided this morning that the Government had not legally established a case of conspiracy against the Star Route defendants. This verdict of absolute acquittal coming so unexpectedly has created a very marked sensation. The announcement in the court room of the verdict was followed by an uproarious scene of applause, tears, hysterics and cheers. Every one expected the jury to disagree. Judge Wylie himself, a week or ten days ago, called up the counsel for the prosecution and said to them, "I do not think you are going to get a verdict out of that jury. I have watched it carefully, and I am certain that four of the best men on it are in doubt." Last night an employee of the Department of Justice reported that the jury stood eleven to one for acquittal. This came from one of the bailiffs, who claimed to have overheard a vote.

At any rate the prosecution had intended, if a disagreement was reported, to ask to have the jury dismissed, on the ground of the condition of Juror Vernon. Had this been attempted, Dr. Sowers, who attended Vernon yesterday would have testified that Vernon was all right mentally, after he had braced him up with two drinks of brandy.

The court room was crowded when the jurors took their places. Every one of the defendants was there. Dorsey sat by his wife, flushed and expectaut. Upon the left of Mrs. Dorsey was her sister Mrs. Peck. Brady was just back of his special counsel, Judge Wilson, looking as hard and grim as ever. All of the counsel for the Star Route defendants were in their seats. Colonel Ingersoll's face showed great self-control, although he was evidently laboring under strong nervous excitement. He was flanked by his entire family.

Mr. Farrell, Mr. Baker (Colonel Ingersoll's secretary), and the white-haired and white-bearded Mr. Bush, the hard working associate of Colonel Ingersoll, were also present.

When the jurors took their places in the court room precisely at ten o' clock, Judge Wylie looked at them, and said in his slow hesitating way: "Gentlemen, I have sent for you to learn—ahem—to learn if you have agreed—ahem—upon a verdict." Mr. Crane the foreman said: "We have agreed."

Judge Wylie gave a start of surprise and looked towards the seats for the counsel of the Government. Not one of them was present. This looked very ominous for the Government's case, and indicated besides that the bailiffs must have betrayed the secrets of the jury room to the prosecution, as neither Bliss nor Merrick came to the court room at all. Mr. Ker, one of the counsel for the prosecution, came in and stood in the door as the Judge said to the Clerk, "Receive this verdict." There was the usual silence as every one turned toward the foreman. Mr. Crane said very deliberately. "We find the defendants not guilty."

Then there followed a scene of great confusion and uproar, which the Judge could not restrain. Indeed he did not try. The triumph of such an unexpected success after two years of fighting in the face of the entire power of the Government, made the humblest person connected in the most remote degree with the defence crazy with joy. When Colonel Ingersoll came out of the Court House a crowd gathered in front of him, and then one stout-lunged, broad shouldered man cried out. "Three cheers for Colonel Ingersoll." There was a wild scene of tiger-like cheering from the excited crowd. This demonstration was a personal compliment to the Colonel, for when the defendants passed out there was not the slightest sign of approval or disapproval beyond the congratulations of personal friends. Colonel Ingersoll stood on the broad steps of the Court House and smiled with the benevolent air of a popular orator in front of a congenial crowd, and laughed outright when some over-enthusiastic admirer called, "Speech, speech."

The morning was clear and bright. Colonel Ingersoll watched the crowd a moment, himself a picture of radiant good nature, as he stood with his white straw hat encircled with a blue band, pushed back from his face. His short thin black coat was partially buttoned over a white duck waistcoat. He rested his hands in

the pockets of his gray trousers. The request for "Speech, speech" so amused him that he chuckled over it all the way to his open carriage, which came up a moment after. He was driven through Pennsylvania Avenue with his family. People called out to him from the sidewalk, and he was obliged to lift his hat so much that he finally sat bareheaded, like a conquering hero, waving his hands to the right and to the left. His house was thronged all day. Mrs. Blaine and her daughter Margaret were among the first who called. There was a procession of people all day long who had no sympathy at all with the defendants, and who were perfectly indifferent whether they went to the penitentiary or not, but who were most heartily glad that their friend Colonel Ingersoll had accomplished such a great personal victory.

Now that the case is over, it is time to tell some facts about the prosecution which have been withheld until the case was closed. In the first place, the management of the prosecution has been equally scandalous with the crimes charged against the defendants. The District Attorney here has always been allowed a five dollar fee for the prosecution of cases. Attorney-Generals who preceded Mr. Brewster ruled that this should be the official fee of special counsel. This was made up by allowing the payment of lump sums as retainers. When Bliss and Merrick were put upon the extravagant pay of one hundred and fifty dollars per day it was inevitable that they would prolong the case to the uttermost. Bliss has, on top of all this pay, put in an extraordinary list of personal expenses, which have been allowed up to a very recent date. The amount of extra matter run into this case only to prolong it has resulted in so confusing the case as to materially aid the defence.

Then the reporting of the case has been turned into a huge job. The stenographers will clear between thirty and forty thousand dollars on their work.

The other day I estimated from official sources, the cost of the Star Route trials at one million dollars. It will go above that. It will foot up near one million two hundred thousand dollars. This evening Col. Ingersoll was serenaded.

There was a large gathering of friends of the Star Route defendants at Colonel Ingersoll's house to-night. Indoors the acquitted men, their counsel, and a large number of their more intimate friends, many of them women, met to exchange mutual congratulations. And in the street a crowd had gathered, partly out of curiosity—and partly to express their sympathy with the defendants. They cheered Ingersoll and the other counsel as well as the defendants and the jury, and called for speeches. Colonel Ingersoll and Judges Wilson and Carpenter spoke briefly.

Col. Ingersoll's speech was short and vigorous. He hailed the verdict of the jury as a victory for truth and justice, and as a notice to the administration that it could not terrorize a jury by indicting jurymen, and a warning to the President that he could not force a verdict by turning honest servants out of office.

*The Sun*, New York, June 15, 1883.

# DAVIS WILL CASE

# ADDRESS TO THE JURY
## IN THE
# DAVIS WILL CASE.*

MAY it please the Court and gentlemen of the jury, waiving congratulations, reminiscences and animadversions, I will proceed to the business in hand. There are two principal and important questions to be decided by you:

First, is the will sought to be probated the will of Andrew J. Davis? Is it genuine? Is it honest?

* The matchless eloquence of Ingersoll! Where will one look for the like of it? What other man living has the faculty of blending wit and humor, pathos and fact and logic with such exquisite grace, or with such impressive force? Senator Sanders this morning begged the jury to beware of the oratory of Ingersoll as it transcended that of Greece. Sanders was not far amiss. In fierce and terrible invective Ingersoll is not to be compared to Demosthenes. But in no other respect is Demosthenes his superior. To a modern audience, at least, Demosthenes on the Crown would seem a pretty poor sort of affair by the side of Ingersoll on the Davis will. It was a great effort, and its chief greatness lay in its extreme simplicity.

Ingersoll stepped up to the jurors as near as he could get and kept slowly walking up and down before them. At times he would single out a single juryman, stop in front of him, gaze steadily into his face and direct his remarks for a minute or two to that one man alone. Again he would turn and address himself to Senator Sanders, Judge Dixon or somebody else of those interested in establishing the will as genuine. At times the gravity of the jury and the audience was so completely upset that Judge McHatton had to rap for order, but presently the Colonel would change his mood and the audience would be hushed into deepest silence. If the jury could have retired immediately upon the conclusion of Ingersoll's argument, there is little doubt as to what the verdict would have been.

If Ingersoll himself is not absolutely convinced that the will is a forgery, he certainly had the art of making people believe that he was so convinced. He said he hoped he might never win a case that he ought not to win as a matter of right and justice. The idea which he sought to convey and which he did convey was that he believed he was right, no matter whether he could make others believe as he did or not. In that lies Ingersoll's power.

Whether by accident or design the will got torn this morning. A piece in the form of a triangle was torn from one end. Ingersoll made quite a point this afternoon by passing the pieces around among the jury, and asking each man of them to note that the ink at the torn edges had not sunk into the paper. In doing this he adopted a conversational tone and kept pressing the point until the juror he was working upon nodded his head in approval.

Both Judge Dixon and Senator Sanders interrupted Ingersoll early in his speech to take exception to certain of his remarks, but the Colonel's dangerous repartee and delicate art in twisting anything they might say to his own advantage soon put a stop to the interruptions and the speaker had full sway during the rest of the time at his disposal. The crowd—it was as big as circumstances would permit, every available inch of space in the room and in the court house corridors being occupied—enjoyed Ingersoll's speech immensely, and only respect for the proprieties of the place prevented frequent bursts of applause as an accompaniment to the frequent bursts of eloquence.—*Anaconda Standard*, Butte, Montana, Sept. 5, 1891.

And second, did Andrew J. Davis make a will after 1866 revoking all former wills, or were the provisions such that they were inconsistent with the provisions of the will of 1866?

These are the questions, and as we examine them, other questions arise that have to be answered. The first question then is: Who wrote the will of 1866? Whose work is it? When, where and by whom was it done? And I don't wan't you, gentlemen, to pay any attention to what I say unless it appeals to your reason and to your good sense. Don't be afraid of me because I am a sinner.* I admit that I am. I am not like the other gentleman who thanked God "that he was not as other men." I have the faults and frailties common to the human race, but in spite of being a sinner I strive to be at least a good-natured one, and I am such a sinner that if there is any good in any other world I am willing to share it with all the children of men. To that extent at least I am a sinner; and I hope, gentlemen, that you will not be prejudiced against me on that account, or decide for the proponent simply upon the perfections of Senator Sanders. Now, I say, the question is: Who wrote this will? The testimony offered by the proponent is that it was written by Job Davis. We have heard a great deal, gentlemen, of the difference between fact and opinion. There is a difference between fact and opinion, but sometimes when we have to establish a fact by persons, we are hardly as certain that the fact ever existed as we are of the opinion, and although one swears that he saw a thing or heard a thing we all know that the accuracy of that statement must be decided by something besides his word.

*Col. Ingersoll when speaking of himself as a sinner in this address is referring to the remarks made by Senator Sanders, who in the preceding address said:

"In an old book occur the words, 'My son if sinners entice thee consent thou not.' I will not apply this to you, gentlemen of the jury. But I have a right to demand of you that you hold your minds and hearts free from all influences calculated to swerve you until you have heard the last words in this case." The Senator enjoined them not to be beguiled by the eloquence of a man who was famed for his eloquence over two continents and in the islands of the sea; a man whose eloquence fittingly transcended that of Greece in the time of Alexander.

There is this beautiful peculiarity in nature—a lie never fits a fact, never. You only fit a lie with another lie, made for the express purpose, because you can change a lie but you can't change a fact, and after a while the time comes when the last lie you tell has to be fitted to a fact, and right there is a bad joint; consequently you must test the statements of people who say they saw, not by what they say but by other facts, by the surroundings, by what are called probabilities; by the naturalness of the statement. If we only had to hear what witnesses say, jurymen would need nothing but ears. Their brains could be dispensed with; but after you hear what they say you call a council in your brain and make up your mind whether the statement, in view of all the circumstances, is true or false.

Did Job Davis write the will? I would be willing to risk this entire case on that one proposition. Did Job Davis write this will? And I propose to demonstrate to you by the evidence on both sides that Job Davis did not write that will. Why do I say so?

First: The evidence of all the parties is that Job Davis wrote a very good hand; that his letters were even. He wrote a good hand; a kind of schoolmaster, copy-book hand. Is this will written in that kind of hand? I ask Judge Woolworth to tell you whether that is written in a clerkly hand; whether it was written by a man who wrote an even hand; whether it was written by a man who closed his "a's" and "o's"; whether it was written by one who made his "h's" and "b's" different. Job Davis was a good scholar.

No good penman ever wrote the body of that will. If there were nothing else I would be satisfied, and, in my judgment, you would be, that it is not the writing of Job Davis.

It is the writing of a poor penman; it is the writing of *a* careless penman, who, for that time, endeavored to write a

little smaller than usual, and why? When people forge a will they write the names first on the blank paper. They will not write the body of the will and then forge the name to it, because if they are not successful in the forgery of the name they would have to write the whole business over again; so the first thing they would do would be to write the name and the next thing that they would do would be to write the will so as to bring it within the space that was left, and here they wrote it a little shorter even than was necessary and quit there [indicating on the will] and made these six or seven marks and then turned over, and on the other side they were a little crowded before they got to the name of A. J. Davis.

Now, the next question is, was Job Davis a good speller? Let us be honest about it. How delighted they would have been to show that he was an ignorant booby. But their witnesses and our witnesses both swear that he was the best speller in the neighborhood; and when they brought men from other communities to a spelling match, after all had fallen on the field, after the floor was covered with dead and wounded, Job Davis stood proudly up, not having missed a word. He was the best speller in that county, and not only so, but at sixteen years of age he wasn't simply studying arithmetic, he was in algebra; and not only so, after he had finished what you may call this common school education in Salt Creek township, he went to the Normal school of Iowa and prepared himself to be a teacher, and came back and taught a school.

Now, did Job Davis write this will? Senator Sanders says there are three or four misspelled words in this document, while the fact is there are twenty words in the document that are clearly and absolutely misspelled. And what kind of words are misspelled? Some of the easiest and most common in the English language. Will you say upon your oaths that Job Davis, having the reputation of the champion

speller of the neighborhood—will you, upon your oaths, say that when he wrote this will (probably the only document of any importance, if he did write it, that he ever wrote) he spelled shall "shal" every time it occurs in the will? Will you say that this champion speller spelled the word whether with two "r's," and made it "wherther," making two mistakes, first as to the word itself, and second, as to the spelling? Will you say that this champion speller could not spell the word dispose, but wrote it "depose"? And will you say the ordinary word give was spelled by this educated young man "guive"? And it seems that Colonel Sanders has ransacked the misspelled world to find somebody idiotic enough to twist a "u" in the word give, and even in the Century dictionary—I suppose they call it the Century dictionary because they looked a hundred years to find that peculiarity of spelling—even there, although give is spelled four ways, besides the right way, no "u" is there. And will you say that Job Davis did not know the word administrators?

Now, let us be honest about this matter—let us be fair. It is not a personal quarrel between lawyers. I never quarrel with anybody; my philosophy being that everybody does as he must, and if he is in bad luck and does wrong, why, let us pity him, and if we happen to have good luck, and take the path where roses bloom, why, let us be joyful. That is my doctrine; no need of fighting about these little things. They are all over in a little while anyway. Do you believe that Job Davis spelled sheet—a sheet of paper—"sheat"? That is the way he spells it in this document. Now, let us be honor bright with each other, and do not let the lawyers on the other side treat you as if you were twelve imbeciles. You would better be misled by a sensible sinner than by the most pious absurdities that ever floated out from the lips of man. Let us have some good, hard sense, as we would in ordinary business life. Do you believe that Job Davis, the

educated young man, the school teacher, the one who attended the Normal school would put periods in the middle of sentences and none at the end? That he would put a period on one side of an "n" and then fearing the "n" might get away, put one on the other; and then when he got the sentence done, be out of periods, so that he could not put one there, and put so many periods in the writing that it looked as if it had broken out with some kind of punctuation measles?

Job Davis, an educated man! And you are going to tell this jury that that man wrote that will! I think your cheeks will get a little red while you are doing it. This man, when he comes to this little word "is" in the middle of a sentence, his desire for equality is so great that he wishes to put that word on a level with others, and starts it with a capital, so that it will not be ashamed to appear with longer words.

And yet the will was written by Job Davis, and Sconce saw him write it, and Mrs. Downey saw him write it. If there were one million Sconces, and a million Mrs. Downeys, and they held their hands up high and swore that they did, I know that they did not, unless all the witnesses who have testified to the education of Job Davis have testified lies. There is where I told you a little while ago that when a lie comes in contact with a fact it will not fit. These other people in Salt Creek township that have come here and sworn to that, did not know whether it was spelled right or wrong. They did not take that into consideration.

It seems to me utterly, absolutely, infinitely impossible that this will was written by a good speller. I know it was not. So do you. There is not a man on the jury that does not know it was not written by a good speller—not a man. And you cannot, upon your oaths, say that you believe two things—first, that Job Davis was a good speller, and, secondly, that he wrote this will. Utterly impossible. There

is another word here, "wordly"—"all my wordly goods." "Worldly" it ought to be; but this Job Davis, this scholar, did not know that there was such a word as worldly, he left out the "l" and called it wordly, "all my wordly goods," and they want you to find on your oath that it was written by a good speller. There are twenty words misspelled in this short will, and the most common words, some of them, in the English language. Now, I say that these twenty misspelled words are twenty witnesses—twenty witnesses that tell the truth without being on their oath, and that you cannot mix by cross-examination. Twenty witnesses! Every misspelled word holds up its maimed and mutilated hand and swears that Job Davis did not write that will—every one. Suppose witnesses had sworn that Judge Woolworth wrote this will. How many Salt Creekers do you think it would take to convince you that he was around spelling sheet "sheat"?

Mr. WOOLWORTH. I have done worse than that a great many times.

Mr. INGERSOLL. You have acted worse than that, but you have never spelled worse than that.

Now, this Job Davis died in 1868. Nobody has seen him write for twenty-three years, but everybody, their witnesses and ours, positively swears that he was a good speller. Now, comes another question: Who wrote this will? Colonel Sanders tells us that it is immaterial whether Job Davis wrote it or not. To me that is a very strange remark. If Job Davis did not write it, Mr. Sconce has sworn falsely. If Job Davis did not write it, then there was no will on the 20th of July, 1866, and all the Glasgows and Quigleys and Downeys and the rest are mistaken—not one word of truth in their testimony unless Job Davis wrote that will.

And yet a learned counsel, who says that his object is to assist you in finding a correct verdict, says it don't make

any difference whether Job Davis wrote the will or not. I don't think it will in this case.

Who wrote the will? I am going to tell you, and I am going to demonstrate it, so that you need not think anything about it—so that you will know it; that is to say, it will be a moral certainty.

Who wrote this will? I will tell you who, and I have not the slightest hesitation in saying it. James R. Eddy wrote this will. And why do I say it? Many witnesses have sworn that they were well acquainted with Mr. Eddy's handwriting—many. Several of the witnesses here had the writing of Eddy with them. That writing was handed to the counsel on the other side, so that they might frame questions for cross-examination. Those witnesses founded their answers as to peculiarities upon the writings given to the other side, and not on the writing in this will—just on the writings of letters and documents they had in their possession, and that we handed to the opposite counsel. Now, what do they say? Every witness who has testified on that subject said that Eddy had this peculiarity: First, that whenever a word ended with the letter "d," he made that "d" separate from the rest of the word.

And, gentlemen, there are twenty-eight words in this short will ending with the letter "d"; clearly, unequivocally, in twenty-seven of the words ending in "d," the "d" is separate from the rest of the word.

I do not include the twenty-eighth, because there is a little doubt about it. The testimony is unvarying, except the writing that Eddy has done since he has been found out to be the forger of that will. Nobody has sworn that he had a letter from him in which that is not the fact, unless that letter was written since the institution of this suit. Twenty-seven of these words end with "d" and the "d" is made separate from the rest of the word. Will Judge Woolworth please tell the jury whether any witness testified that Job

Davis made these separate from the rest of the word? Poor Job, dead, and his tombstone is being ornamented with "guive," and he is now made to appear as an ignorant nobody.

Twenty-eight words ending with "d." Now, if that were all, I would say that might be an accident—a coincidence, and that we could not build upon that as a rock. I would say we must go further, we must find whether any more peculiarities exist in Eddy's writing that also exist in this will. We must be honest with him. Now, let us see. He always had the peculiarity of terminating that "d" abruptly, down just above the line, or at the line, lifting his pen suddenly, making no mark to the right. Every one of the "d's" in the will is made exactly that way. Corroboration number two. These twenty-seven witnesses, the "d's," swear that Eddy is their father, that they are the children of his hand, that he made them.

Another peculiarity: They say that Eddy always made a double "l" in a peculiar manner. The last "l" came down to the line of the up stroke, and that "l" as a rule stopped there. It did not go on to the right—a peculiarity. Now, let us see. In this will there are nine words that end with a double "l" (and I want you to look at that when you go out); each one is made exactly the same way—each one. Nine more witnesses that take the stand and swear to the authorship of this will.

Has anybody shown that that was Job Davis's habit? Poor, dead dust cannot swear; nobody has said that. Another peculiarity is that Eddy made a "p" without making any loop to the right in the middle of it. Now and then he makes one with a loop, but his habit is to make one without. Moses Downey swore that Job Davis made a "p" with three loops, a loop at the top, a loop at the bottom and a loop in the middle. That is exactly what he swore, and he was the one who taught Job to write; and he said he made

his letters carefully, he closed his "a's" at the top, he made his "o's" round, he made his "h's" after the orthodox pattern, he was all right on the "b's"—your witness.

Now, gentlemen, you remember how that "p" looks, without any loop; and there are twenty-one "p's" that have no loop to the right—twenty-one in this will. Twenty-one more witnesses, and every one of them is worth a hundred Sconces, with his sheep and hogs floating in the air. Twenty-one witnesses that swear to the paternity of this will. Moses Downey, your own witness, swears that Job made a "p" with three loops. There is not a "p" in the will with three loops, and there are twenty-one without any, and the evidence of all the witnesses on our side was that it was his habit to make "p's" without any loop, and they were given the papers that they might cross-examine every one.

Now, do you see, we are getting along on the edge of demonstration.

These things cannot conspire and happen. They may in Omaha, but they can't in Butte, or even in Salt Creek township. Nature is substantially the same everywhere and I believe her laws are substantially the same everywhere, from a grain of sand to the blazing Arcturus; everywhere the probabilities are the same. Let us take another step.

It is also sworn by intelligent men who have the writing of Eddy in their possession, (writing shown to the other side) that it was his habit to use "a's," "o's" and "u's" indiscriminately. For instance, "thut" that, you all remember in the will. When you go out you will see it. He often uses an "o" where an "a" should be, an "a" where a "u" should be, a "u" where an "a" or "o" should be; in other words, he uses them interchangeably or indiscriminately. How many cases of that occur in this will? Twenty-two—twenty-two instances in this will in which one

of these vowels is used where another ought to have been used.

Twenty-two more witnesses that James R. Eddy wrote this will. Twenty-two more. They have taken the stand; they won't have to be sworn, because they can't lie. It would be splendid if all witnesses were under that disability —that they had to tell the truth. That cannot be answered by logwood ink. Eddy made "p's" just the same, whether he used logwood or nigrosin, and he used his "a's" and "o's" and "u's" indiscriminately, no matter whether he was writing in ink, red, blue, brown, iron, Carter's, Arnold's, Stafford's, or anybody else's. Another witness testified that he used "r" where he ought to use "s," and that he used "s" where he ought to use "r," or that he made his "r's" and "s's" the same. Many instances of that kind occur in this will, and every "r" says to Eddy, "you are the man"— every one. Every "s" swears that your will is a poor ignorant, impudent forgery.

That is what it is—the most ignorant forgery ever presented in a court of justice since the art of writing was invented. It comes in covered with the ear marks of fraud. And yet I am told that it requires audacity to say that it is a forgery. What on earth does it require to say that it is genuine? Audacity, in comparison with what is essential to say that it is genuine, is rank meekness and cowardice. Words lose their meaning. All swear that Eddy scattered his periods with a liberal hand, like a farmer sowing his grain. Now, we will take the twenty-third line of the will. "To their use (period) and (period) benefit (another period) forever (another period)"; twenty-fifth line: "Davis (period) and (another period) Job (another period) Davis (another period) of (another period) Davis (another period) County (another period)." What a spendthrift of punctuation this man was! And yet he was well educated, studying algebra, going to the Normal

school in Iowa, champion speller of the neighborhood. Every period certifies and swears that Job Davis did not write that will. He had studied grammar. Punctuation is a part of grammar and no one but the most arrant, blundering, stumbling ignoramus, would think of putting six or eight periods along in a sentence, and then leaving the end of that sentence naked without anything. Another peculiarity is, Mr. Eddy uses "b" and "h" interchangeably. He makes a "b" exactly like an "h," makes an "h" exactly like a "b." You can see that all through the will. There are several instances of it, and each one says that Job Davis did not write it. Downey says he did not write that way, and each one says that Mr. Eddy did write it, and nobody else.

I am not through yet. The testimony is that Eddy was a poor speller.

Now, the learned counsel, Mr. Dixon, says that in this case we must be governed by the probable, by the natural, by the reasonable—three splendid words, and they should be in the mind of every juror when examining this testimony. Is it natural, is it probable, is it reasonable? We have shown that Eddy was the poorest speller in the business. Whenever they went to a spelling match, at the first fire he dropped; never outlived, I think, the first volley. And one man by the name of Sharp distinctly recollects that they gave out a sentence to be spelled: "Give alms to the poor," and Eddy had to spell the first word, give; and he lugged in his "u" with both ears—"guive," and he dropped dead the first fire. The man remembers it because it is such a curious spelling of give; and if I had heard anybody spell it with a "u" when I was six years old it would linger in my memory still.

Now, let us take Judge Dixon's test. It is a good one, well stated, and it is for you to decide whether the misspelled words were misspelled by a good speller or a poor

speller. If you say Job Davis wrote it, then you are unnatural, unreasonable and improbable.

Isn't it altogether more natural, more reasonable, more probable, to say that a bad speller misspelled the words than that a good speller did?

Let us stick to his standard, and see if Eddy spelled give "guive"—and, gentlemen, you cannot find in all the writing of James R. Eddy, written before he was charged with this forgery, where the word give appears, that it is not written with a "u"—I defy you to find a line in the world where "given" is "guivin." Now, let us go another step. Everybody admits that he was a poor speller, and is it not more reasonable to say that he wrote the will on the spelling, than that the champion speller did? We have some more evidence on Mr. Eddy as good as anything I have stated.

Now, do not be misled because I am a sinner. Let us stick to the facts. William H. Davis testified to the spelling of Eddy, and while he testified, held in his hand a will that he had seen James R. Eddy write. In this will there were twenty words misspelled; shall, "shal" and in the James Davis will, shall "shal." Good! Whether, in our will "wherther"; in the other will, "wherther"—just the same; sheet of paper, "sheat" in our will; "sheat" in the other will; in our will "guive," in that "guive." Did Job Davis rise from the dead and write another will? Was one copied from the other, and the copy so slavish that it was misspelled exactly the same? You cannot say it was entirely copied, for now and then a word, by accident, is right.

Judge Dixon tells you that Eddy did not disguise his spelling. Good Lord! How could he disguise his spelling? He spelled as he thought was right. No man of his education would think of disguising his spelling. He knows how to spell give; he believes it is with a "u" still. There is a prejudice against "u" since he was charged with

forgery, and so he has dropped it; but he thinks it is right, nevertheless. Now, isn't it perfectly wonderful, is it not a miracle, that James R. Eddy made exactly the same mistakes in spelling and writing one will that Job Davis did in writing another?

Isn't it wonderful beyond the circumference of belief, that a good speller and bad speller happened to misspell the same words? It won't do. There is something rotten about this will, and the rotten thing about it is that James R. Eddy wrote it, and he wrote it about March, 1890. That is when he wrote it, and he let the proponent in this case have it. We will get to that shortly. So, gentlemen, I tell you that every misspelled word is a witness in our favor. There is something more. Eddy uses the character "&" in writing, instead of writing "and." The will is full of them; and it is stated that sometimes when he endeavors to write out the word "and" he only gets "an," and that peculiarity is in this will. "An" for "and"; that you will find in the seventeenth line in the last word of the line. Colonel Jacques swore that one of Eddy's misspelled words was the word "judgment"; that he put in a superfluous "e," and in this case here is "judgement"—"shall give the annuity that in the judgement of the executors shall be final;" there is the superfluous "e"—judgement. Now, there is another. Their witnesses swore that as a rule he turns the bottom of his "y's" and "g's" to the left. Now, you will find the same peculiarity in this will, and the amusing peculiarity that he turns the "g's" a little more than he does the "y's." I don't want these things answered by an essay on immutable justice. I want them to say how this is. Another thing, how he makes a "t," with a little pot hook at the top, and that hook has caught Mr. Eddy. You will find them made in the will, exactly, where the "t" commences a word—where it is what we call the initial letter. And what else? When he makes a small "e" commencing

a word, he always makes it like a capital "E," only smaller. That is the testimony, and that happens in this will and it happens in the papers and letters.

Now, I say, that all these peculiarities taken together, the same words misspelled, the same letters used interchangeably, the same mistakes in punctuation, the same mistakes in the words themselves—all these things amount to an absolute demonstration. So, I told you, he uses the capital "I" with the word "is" and that he does twice in this will.

Here are hundreds, almost, of witnesses that take the stand and swear that Eddy is the author of that will. He wrote it—every word of it. He negotiated with John A. Davis for it, and I will come to that after a little. And how do they support this will that has in it the internal evidence that it was written by James R. Eddy? Why do I say it is impossible that he should have written it, and the will should be genuine? Because at the date of that will, or the date it purports to bear, Eddy was only eight years old. And we don't know the real date, gentlemen, of that will yet. My opinion is that it was dated by mistake, so that it came on a date that Davis was not there, or came on a day that was Sunday, and then they folded up that will, and scratched it and rubbed it until the date is absolutely illegible, and nobody can say whether it is June, July, or January. There was a purpose. The day may have been Sunday, or they may have afterward ascertained that he was not there. It is a suspicious circumstance that the day is left loose so they can have a month to play on, maybe more. Now, they say, can you impeach Sconce?

Every misspelled word in the will impeaches Sconce, every period impeaches Sconce, every "a" that is used as "o" impeaches him, and "o" as "u"; every "b" that is made like an "h" impeaches him, every "h" that is made like a "b" impeaches him.

In other words, every peculiarity of James R. Eddy that appears in that will impeaches J. C. Sconce, Sr.—Captain Sconce. There is a thing about this will which, to my mind, is a demonstration. It may be that it is because I am a sinner, but I find, and so do you find it in the second initial of Sconce, in the letter "C." There are two punctures, and you will find that exactly where the punctures are there is a little spatter in the ink—a disturbance of the line, in the capital first; in the small "c" there is another puncture and another disturbance of the line. Professor Elwell says that these holes were made afterwards. Let's see. There is a hole, and there is a splatter and a change of the line. There is another hole and there is another change. There is another hole and there is another change. What is natural? What is reasonable? What is probable? It is that the hole being there, interrupted the pen, and accounts for the diversion of the line, and for the spatter. That is natural, isn't it? but they take the unnatural side. They say that these holes were made after the writing. Would it not be a miracle that just three holes should happen to strike just the three places where there had been a division of the line and a little spatter of the ink? Take up your table of logarithms and figure away until you are blind, and such an accident could not happen in as many thousand, billion, trillion, quintillion years as you can express by figures.

Three holes by accident hitting just the three places where the pen was impeded and where the spatters were. Never such a thing in the world. It might happen once. Nobody could make me believe that it happened twice—that is, a hole might happen to get where the pen was interrupted once; as to the second hole, I would bet all I have on earth, as to the third hole, I know it did not. I just know it did not. And yet Mr. Elwell says that these holes were made afterwards, and he goes still further, and

says that there is not any trouble in the line. If anybody will look at it, even with the natural eye, they can see that there is; and, in a kind of diversion, they called Professor Hagan, when he called attention to it, Professor Pin-holes and pin-hole expert. He might have replied that that was a pin-head objection.

Professor Elwell accounts for all the dirt on this will by perspiration, all on one side and made by the thumb, and although there were four fingers under it at the same time, the fingers were so contrary they wouldn't perspire. This left the thumb to do all the sweating. I need not call him a professor of perspiration, for that throws no light on the subject; but I say to you, gentlemen, that those marks, those punctures, were in that paper when Sconce wrote his name. Sconce says they were not—he remembered. He has got a magnificent memory. I say that even that shows that he is not telling the facts.

Now, what else? We went around among the neighbors. He was charged with passing counterfeit money, with stealing sheep, with stealing hogs, with stealing cattle and with stealing harness.

Mr. WOOLWORTH. It was not proved that this man was accused of counterfeiting, of passing counterfeit money.

Mr. INGERSOLL. I tell you how I prove it. A man by the name of Lanman was on the stand. He swore he was acquainted with Sconce's reputation. Colonel Sanders asked him who he had ever heard say anything about it. He said Lewis Miller and Abraham Miller and a man by the name of Hopkins and several others. What did they say? I asked them afterwards, and among other things I recollect he was charged with passing counterfeit money, stealing hogs, stealing sheep, stealing harness, killing another man's heifer in the woods. I don't think I am mistaken, but if I am I will take counterfeit money back. I

won't try to pass counterfeit money myself, although a sinner.

Mr. WOOLWORTH. (Interrupting): He was not charged with killing a heifer.

Mr. INGERSOLL. No, no; the heifer was there. I have a very good memory; I suppose it comes from the habit of taking no notes. Lanman was the man, and while we are on Sconce there is a thing almost too good to be passed.

Mr. Jackson was on the stand, Senator Sanders asked him, "Whoever told you anything against him?" "Well," Jackson answered, "I asked Hopkins—" "Who else?" "Well," he said, "I had a private conversation, I don't like to tell." "You have got to tell." Mr. Jackson said to the Court: "Must I tell; it was a private conversation." "You must tell." "Well," he said, "it was with Mr. Carruthers, one of the counsel for proponent;" and he said that what Mr. Carruthers said had more influence upon him than anything else, because Carruthers was in a position to know.

Mr. SANDERS. (Interrupting). Were those his exact words?

Mr. INGERSOLL. Yes, that he was an attorney. I tell you that was a death-blow; that came like thunder out of a clear sky, when you haven't seen a cloud for a month.

Besides that he was impeached in open court. What else? The witnesses that came to the rescue of Sconce; how did they rescue him? They lived down there and never heard anything against him. All these rumors, thick in the air, the bleating of sheep following him wherever he went; the low of cattle and yet these people never heard it. Tried for stealing harness, they never heard of it. They were not acquainted with him. They said that they had some personal dealings with him and he was all right, and one man endeavored to draw a distinction between truth and honesty. A man could be a very truthful man

and a very dishonest man. Just think of that distinction, a man of truth but dishonest. That won't do. Even Senator Sanders said: "Some accusations, probably a dozen," to use his excellent language—what memories we have! Let me read the exact words: "Some accusations; probably a dozen or more, of stealing sheep and hogs *lit on* Sconce."

Mr. SANDERS: I didn't say that.

Mr. INGERSOLL. I don't insist; but those are the exact words I remember. And don't you remember that he went into a kind of homily on neighborhood gossip, that hardly anybody escaped? I believe a good many of this jury have escaped and a good many in this audience have escaped. You can pick out a great many men that a dozen accusations of stealing hogs and sheep and heifers have not *lit on*.

Then, there is another thing about Sconce that I don't like, gentlemen. Sconce, in giving the history of the affair in Arkansas, was asked if he didn't say, "Did I say that Davis' name was on it when I signed it?" and right there he skulked and stated under oath that when he said that he alluded to the photograph. Could he by any possibility have alluded to the photograph when he said: "Did I say that Davis's name was on it when I signed it?" Did he ever sign the photograph? No; he never signed the photograph. Davis never signed the photograph, and if he ever said those words he said them with reference to the original will, and he knows it. And yet, in your presence, under oath, he pretended that when he made that remark he alluded to the photograph. I wish somebody would reply to that and tell us whether, as a matter of fact, he alluded to the photograph.

Now, Mr. Sconce, as you know, has the most peculiar memory in the world. He remembers things that had nothing whatever to do with the subject, photographed in all details, everywhere; and yet, gentlemen, your knowl-

edge of human nature is sufficient to tell you that that kind of memory is not the possession of any human being.

Thousands of people imagine that detail in memory is evidence of truth. I don't think it; if there is something in the details that is striking, then there is; but naturalness, and, above all, probability, is the test of truth. Probability is the torch that every juryman should hold, and by the light of that torch he should march to his verdict. Probability! Now, let us take that for a text. Probability is the test of truth. Let us follow the natural, let us follow the reasonable.

At the time they say this will was made, Andrew J. Davis had removed from Iowa years before; had settled, I believe, in Gallatin county. His interests in Iowa were nothing compared with his interests in this Territory at that time. From the time he left Iowa he began to make money; I mean money of some account. He began to amass wealth. He was, I think, a sagacious man.

Judge Dixon says that he was a man of great business sagacity. I am thankful for that admission. In a little while he became worth several hundreds of thousands of dollars. Afterwards he acquired millions. Now, during all that time, from the 20th of July, 1866, up to the day of his death, he never inquired after the James Davis will. It is a little curious he never wrote a letter to James Davis and said, "Where is the will, have you got it?" Not once. They have not shown a letter of that kind, not a word. Threw it in the waste-basket of forgetfulness and turned his face to Montana. Years rolled by, he never wrote about it, never inquired after it.

They have brought no witnesses to show that A. J. Davis ever spoke of the will; not a word. Gentlemen, let us be controlled by the natural, by the reasonable, by the probable.

In 1868 one of the executors died—Job Davis. I think

Colonel Sanders said that if a man of Judge Davis's intelligence, knowing what a difficult thing a will is to write, should have allowed Mr. Knight, a Kentucky lawyer, to draw his will, who had not had much practice, why, he is astonished at that, and in the next breath tells you that Andrew J. Davis employed a twenty-two year old boy who could not spell "give" to draw up his will in 1866. Isn't it wonderful what strange things people can swallow and then find fault with others! Now, remember:

In 1868 Job Davis died; then there was only one executor to that will. A. J. Davis went on piling up his money, thousands on thousands. Greed grew with age, as it generally does. Gold is spurned by the young and loved by the old. There is something magnificent after all about the extravagance of youth, and there is something pitiful about the greed of old age. But he kept getting money, more and more, and in '85 he had sold the Lexington mine. He was then a millionaire. In '85, I think. They say he sold that mine in '81, maybe he was then a millionaire. There was the will of '66 down in Salt Creek township, used as a model for other wills, for the purpose of teaching the neighbors spelling and elocution, to say nothing of punctuation. They got up little will soirees down there—will parties—and all the neighbors came in and Mrs. Downey read it aloud and wept when she thought it was the writing of her brother Job. That accounts for the tear drops, I suppose; the round spots on the will. 1885; Andrew J. Davis worth millions. Then what happened? Then James Davis, the other executor, died. Then there was a will floating around down in Salt Creek township, sometimes in a trunk, sometimes in a box, other times in an old envelope, other times in a wrapper, and when I think of the shadowy adventures of that document it makes me lonesome. James is dead, poor Job nothing but dust; a will down there with no executors at all; and A. J. Davis did not know in whose pos-

session it was, and never wrote to find out. Let us be governed by the natural, gentlemen, by the probable. Never found out, never inquired, and after James Davis died he lived four years more. I think James Davis died on the 5th of December, 1885, then he lived a little more than three years after he knew that both executors were dead and did not know whether the will existed or not. Judge Dixon tells us perhaps if he had made a will before he died it would have been different from this. I think perhaps it would. What makes him think that it would have been different? If that will existed in Salt Creek township he knew it, and he knew it in 1885, 6, 7, 8, 9, and when death touched with his icy finger his heart he knew it then, and if he made that will in '66, it was his will when he died unless it had been revoked. He knew what he was doing.

I tell you there was no will down in Salt Creek township at all; there wasn't any here. There have been a good many since. Now, where is the evidence that he ever thought of this will, that he ever spoke of it?

What else? He appointed three executors of his will, that is, in '66, if he made it, and in that he provided that a like maintenance should be given to Thomas Jefferson, Pet Davis and Miss Bergett, all three of Van Buren County, State of Iowa. What else did he say? That the executors should have the right of fixing that amount, and whatever amount in their judgment should be fixed should be final. What is the legal effect of that? The legal effect of that is that the estate could not have passed to John A. Davis until the last who had a life interest was dead. The proceeds could have been taken, every cent of them, from that estate and given to the three persons for life maintenance, and the youngest of those persons was four years old. John A. Davis would have had to wait seventeen years. And do you think that A. J. Davis ever made a will like that, putting it into the power of two executors to divert the entire

income to certain persons and that there could be no division until they were all dead.

Now, another improbability. Recollect, all the time, that we are to be governed by reason and naturalness. Now, then, it was claimed that Judge Davis held certain relations with a certain Miss Caroline Bergett. It was claimed that a daughter known as Pet Davis was his. It was also claimed that a boy, Thomas Jefferson Davis, was his son. Nobody tells the truth in this will although it has been alluded to and argued as well, I think, as could be. There is this trouble in the will that though the boy Jeff was never in Van Buren County until he was twelve years old—was never there until six years after the will was dated, yet his supposed father describes him as of Van Buren County.

Next, Miss Caroline Bergett had married a man by the name of W. V. Smith in 1853, and in 1858, W. V. Smith took his wife and children and moved to Texas—eight years before this will was made, and yet A. J. Davis forgot her name, forgot her residence, forgot the residence of the boy that was imputed to him; that of itself is enough to show that he was not present when the will was made. If there is anything on earth that he would remember this is it, and you know it. Although Mrs. Downey could not remember when she was married or when her first child was born, she does remember the time it took her to dust the room where there was a clothes-press, a table and three or four chairs. She recollects that.

Another improbability:

John A. Davis, the proponent, had charge of the Davis farm down in Iowa and stayed there for six years after this alleged will was made, and although he was acquainted with the Quigleys, the Henshaws, the Sconces, and all the aristocracy of the neighborhood, he says he never heard of the existence of this will which so many people of that section talked about. What a place for keeping secrets!

Senator Sanders says that the reason Judge Davis made his will in Salt Creek township was because in that township they knew about this woman or these women and these children, and he didn't want to go into any other community and make his will.

Any need of publishing his will? Any need of reading any more than the attesting clause to the attesting witnesses? Any need to divulge a line? None. Ah, but Senator Sanders said that he wanted to keep the secret. That is the reason he left the will upon that table and rode away in a debonnair kind of style on his roan horse with the bobtail, leaving a congregation of Salt Creek loafers to read his will. He wanted to keep it secret; hoped that it would never get out. Imagine the scene, Job Davis writing the will; Mrs. Downey with a duster tucked under her arm like the soubrette in a theatre. Well, when he was writing the will she was looking over his shoulder and read the will as fast as he wrote it. That makes me think of the fellow who was writing a letter and there was a man looking over his shoulder, so he said: "I would write more but there is a dirty dog looking over my shoulder," and the fellow said: "You are a liar."

Everybody read it. Mrs. Downey read it; she read it as Job wrote it; then he read it aloud; and then he went and got Sconce and read it again; then in comes Glasgow and he read it. I think Mrs. Downey must have read this will ten or twelve times.

Mr. MYERS. She said twenty-five.

Mr. INGERSOLL. Oh, yes; twenty-five, because it was in Job's handwriting; and whenever the twilight crept around the farm bringing a little sadness, a little pathetic feeling, she would light a candle and hunt the will, and read it just to think about Job. She would see the words "guive" and "wherther" and all that brought back Job, and she used to wonder "wherther" he was in Paradise or not.

Now, John A. lived down there and knew all these people and never heard of that will.

What do you think of that? Why is it that John never got any information from Sconce? Sconce, who saw the will written and who was one of the attesting witnesses. Why didn't he hear of it from old Downey? Why didn't he hear of it from the Quigleys or the Dotsons? Why didn't he hear of it in Salt Creek township, when it was seen and read and read and read again until I think many of them knew it by heart? And yet the only person really interested was walking around unconscious of his great good fortune, and nobody ever told him. There is another thing: For four months after Andrew J. Davis died nobody told John about the will. Nearly four months passed away; I think he died on the 11th of March, 1890, and this will came to John on the first day of July. All the neighbors knew it. Just as soon as A. J. died, they all said: "John is coming right into the fortune now" only nobody told John; and the first man we find with the will is James R. Eddy, and the next man we find with the will is John A. Davis, the proponent. When John A. Davis saw this will, leaving him four or five million dollars, it did not take much to convince him that the signature was genuine. Human nature is made that way. If it was leaving four or five millions to either of us, including the sinner who addresses you, the probability is that I would say, "Well, that looks pretty genuine—pretty genuine." And then if I could get a few other fellows to swear that it was, I would feel certain, and say, "That is my money."

Now, another improbability. All the evidence shows that Judge Davis was a business-like, quiet, methodical, careful, suspicious man, secretive, keeping his business to himself, keeper of his own counsels; and when he did make a will it was sealed; it was given to one of his friends to put away, and to keep. It did not become the common property of the

neighborhood. He did not mount his roan horse and ask the people of the community to look at it. He was a methodical, business-like man, and I suppose many of you, gentlemen of the jury, knew him; and I shall rely somewhat on your knowledge of A. J. Davis, for you to say whether he made this will, whether in 1866 he left his old father naked to the world; whether he cared nothing for brothers and sisters; whether he cared nothing for the children of the sister that raised him. I leave it for you to say. You probably know something about this matter. Andrew J. Davis, when he was a child, when all the children were gathered around the same knee, the children that had been nourished at the same tender and holy breast, he would not have done this then. If some good fortune came to one, it was divided.

How beautiful the generosity, the hospitality of childhood! But as they grow old there comes the love of gold, and the love of gold seems to have the same effect upon the heart that it does upon the country where it is found. All the roses fade, the beautiful green trees lose their leaves, and there is nothing in the heart but sage brush. And so it is with the land that holds within the miserly grip of rocks what we call the precious metals.

The next question in the case is the Knight will. Was any such will made? And I say here to-day, knowing what I am saying, I never saw upon the witness stand a man who appeared to be more candid, more anxious and desirous of telling the exact truth than E. W. Knight, and from what I have heard there is not a man in Montana with a better reputation. He has no interest in this business, not one penny; and it was months and months after the death of Judge Davis that we knew such a will ever existed —that is, on our side. Either Mr. Knight was telling what he believed to be true, or he was perjuring himself. No ifs and ands about it. He is a man of intelligence and

knows what he is saying. He swears that A. J. Davis made a will.

And what else does he swear to? That there was also the draft of a will, which gave away the mine or provided for its working, and then at the end of that draft, provided that the rest of the property should be divided in accordance with the statute. Thereupon Mr. Knight told him: "Your heirs would interfere by injunction, and you had better bequeath your whole property and fix the amount to be expended in the development of the mine." Thereupon he made another will, and that will was signed.

Now, Mr. Knight knows whether it was signed or not. The will was signed or Mr Knight committed perjury knowingly, willfully and corruptly. What does he say? That it was signed. What else? That it was attested. Then these gentlemen came forward with Mr. Talbot, who says that Knight said that when Davis came to the bank to get the will he thought he was going to execute it. That is, the idea being, it was not signed.

What was it attested for if it was not signed? That is absurd to the verge of idiocy. But they say that Mr. Knight is not corroborated. Let us see. He says that Andrew J. Davis made a will. Mr. Keith swears that A. J. Davis made a will. Knight says that Davis went out and brought Keith in, and Keith swears that he lived next door and A. J. Davis did come in there and get him and he knows the time on account of the sickness of his child. Corroboration number two. Knight swears that Davis then went for another man. Keith says that he did go and get Caleb Irvine. Corroboration number three. Knight said one of the men who signed the will was in his working clothes. Corroboration number four. Knight swears that Davis read the attesting clause. Keith swears the same. Keith swears that Davis signed it, that he signed it, and then Irvine signed it. What more? He swears that Knight

wrote it, and he was writing it when he went in. And yet they have—and I will use an expression of one of the learned counsel—the audacity to say that Mr. Knight has not been corroborated.

And they would have you believe that Knight took that will over to Helena and put it in the safe when it was not signed by A. J. Davis, and they would make you think besides that, that it was attested by two witnesses, and that two witnesses had to say that they saw A. J. Davis sign it, that he signed it in their presence, and that they attested his signature in his presence and in the presence of each other. They proved a little too much, gentlemen. They proved that by Talbot. They proved that by Andrew J. Davis, Jr., who expects to fall heir to all that is taken, and they proved it also by John A. Davis, the proponent.

RECESS.

May it please the Court and gentlemen: When we adjourned I was talking about the testimony of Mr. Knight, and the making of the Knight will. The evidence is, the way that will came to be made, or what started it, is, as follows: A. J. Davis borrowed of the First National Bank of Helena forty thousand dollars to put in the mines, and Governor Hauser remarked when he got the money: "Another old man going to fool with mines until he gets broke." And that it seems piqued A. J. Davis, touched his vanity a little, and then he said: "That mine shall be developed whether I live or die. I am satisfied that it is a good mine, and I am going to make a will and I am going to provide in that will for the mine being developed." And thereupon he talked with Mr. Knight. And finally Knight drew up a draft of a will, according to his testimony, providing for the working of that mine. And what did he say when he got through with it? "Now as to the balance of the property, let it be divided according to law. That makes a good will." That is what he said. Then Mr.

Knight said to him: "If you make the will that way it may be that the heirs will come in and enjoin the working of the mine on the ground that it is a waste of money. You had better make a full will and dispose of all your property as you may desire, and fix the amount to be used in the devolopment of that mine."

Now, this is either true or false. It is true if Mr. Knight can be believed; and he can be believed if any gentleman can be trusted.

What more? Knight says that A. J. Davis made the memoranda from which to draw that will, had his manager come, and in that will it told how the shafts should be run, how much work should be done, and charged his trustees to do development work up to a certain amount.

Is that all born of the fancy of this gentleman? And can you believe that a man like Mr. Knight, who has run the largest bank in Montana for twenty-five years—can you believe that such a man, who is not in any necessity, who is not in need of money, comes here and swears to what he knows to be a lie, and makes this all out of his own head, carves it out of his imagination?

The second will was made, the second will was signed, the second will was attested, the second will was given Mr. Knight to keep. They say it was not signed, and yet Mr. Knight swears he told one man about it. He told Mr. Kleinschmidt, so that if anything happened to him, Knight, he would know that Knight had in that vault the will of Andrew J. Davis. Do you think he would have done that if the will had not been signed, if it were worth only waste paper? And yet they are driven to that absurdity for the purpose of attacking the evidence of this man. It will not do.

Judge Knowles said that in a conversation at Garrison, he said that in the will the mine was left to Erwin Davis, and the reason given for it was that Erwin Davis was a

business man. Now, the only way that can be explained, is one of two ways. One is that Judge Knowles has gotten two matters mixed; the other is that he is absolutely mistaken.

Judge Knowles, the President of the First National Bank of Butte—Judge Knowles, who has been the attorney of Andrew J. Davis, Jr.—Judge Knowles had this conversation, or some conversation, with Knight; and why would Knight have taken pains to tell him a deliberate falsehood?

There is something more. After all this occurred, Andrew J. Davis, Jr. went to Mr. Knight and asked him to write out what he remembered about that will, and Knight dictated it on the spot and sent it to him.

Where is that letter? Here it is. I want to read that letter to this jury. That was a letter written long ago. A letter written before this will was filed in this court. A letter written before Mr. Knight knew that A. J. Davis, Jr. had any will. A letter written before Knight imagined there could ever be a lawsuit on the subject. Andrew J. Davis Jr. went to him and asked him to write out what he knew about that will, and he turned, according to his own testimony, and dictated it, and sent it to him, like a frank, candid, honest man; and before I get through I will read that letter, and when it is read I want you to see how it harmonizes absolutely and perfectly with his testimony here on the stand.

I will draw another distinction. Mr. Knight gave two depositions in this case. These depositions have not been suppressed like the deposition taken of Sconce. Not suppressed. Why? Because we are willing that the jury should read the two depositions and hear his testimony besides, and there is not the slightest contradiction in the depositions themselves, or between the depositions or either one of them and his evidence that he gave here—except two

that they claim; and think what immense contradictions they are.

In one deposition he says that A. J. Davis left some bequests to some aunts. Mr. Knight swears on the stand that he never said aunts, he said sisters, but if he did say aunts he meant sisters, because he never heard of his having any aunts, and yet that is held up as a contradiction, and to such an extent that you are to throw away the testimony of this man.

Now, here is the letter. This will was filed July 24, 1890, and when he wrote this letter he did not know that A. J. Davis Jr. knew of a will, or that John A. Davis knew of a will. And this is what he writes:

Helena, Montana, *July* 22, 1890.

I beg to say that some time in 1877 or 1878, I made a draft of a will for your uncle Andrew J. Davis, which he duly executed, and left the same on file with me, as a special deposit for two or three years, when the same was canceled and destroyed; when I was led to believe and to conclude that he had made and executed a will to supersede and take the place of that.

That explains Talbot's testimony. Instead of saying to Talbot that A. J. Davis came there, as he thought, to execute the will, and destroyed that will, it not being signed, what he said was that he destroyed the will, but from the way he acted he thought he was going to make another, that he was going to execute a will; and this is exactly what Mr. Talbot said. To execute a will, and it took a re-direct examination to swap the "a" for "the."

I cannot satisfactorily recall the considerations and provisions of said will drawn by me, but the main burden and desire was that the work on the mine known as the Lexington, should be continued to a certain amount of development, and that the mill should be carried on under a certain management, and after providing for the payment of his just debts, he made certain bequests naming certain nephews and nieces, running from ten thousand to fifteen thousand dollars each, and you are especially named for the sum of twenty-five thousand dollars, and if the estate exceeded in value the net sum of five hun-

dred thousand dollars, then those bequests were to be increased; and if in excess of one million dollars, the further increase was named and specified.

That is the letter he wrote before he ever knew there would be this suit; before he knew of the existence of this will.

A certain boy named Jefferson—claimed to be his son—was given the sum of twenty thousand dollars to be paid to him in yearly sums of five thousand dollars for four years, and the same provision as to a certain girl, claimed to be his child.

Is that not exactly what he swore to on this stand?

Certain executors named E. W. Knight, S. T. Hauser, and W. W. Dixon, each to receive the sum of ten thousand dollars for services.

Yours truly,

E. W. KNIGHT.

Now, gentlemen, they were informed of the existence of that will and of its destruction, and were so informed before John A. Davis filed this will. And when we pleaded this will, John A. Davis pleaded that it had been republished, and yet no evidence was given in of any republication. They knew that under the statute of Montana, when a man makes will number one, and afterwards makes will number two, and afterwards destroys will number two, that will number one is not revived; that the making of the second will kills the first, and the destruction of the second kills that, and leaves the man intestate and without any will. Now, there is the letter of Mr. Knight—full, free, frank, candid, honorable, like the man himself. He says there that he does not remember all the provisions, but he does remember that he provided for some nephews and nieces, and provided for Andrew J. Davis, Jr., twenty-five thousand dollars, for one Jefferson twenty thousand, for the girl about the same, and that he provided also for the executors of the will, and appointed Knight, Hauser, and Dixon as his executors. That is exactly what he says here.

Now, was that will made? Have they impeached Mr.

Keith? I tell them now that they cannot impeach him. He has sworn to the making of that will, apart and separate from Mr. Knight. Oh, they say, why didn't they bring Knight in, and prove by him that he then recollected Mr. Keith? What has that to do with it? Mr. Keith recollected Mr. Knight, swore that he wrote the will, and that he was writing it when he came in, and swore that he attested it, that Davis signed it, and Irvine also signed it. What more do we want on that will? I say, gentlemen, that the will of 1880 ends this case. There is not ingenuity enough in the world to get around it, and there was and never will be enough brains crammed into one head to dodge it. That will was made, and every man on the jury knows it. That will was executed by Andrew J. Davis, every man of you knows it, and the will was afterwards destroyed.

Now, the question is, did that second will revoke the first will? Had it a revoking clause in it? E. W. Knight swears it had, and he swears that he copied it from a will made by an uncle of his named John Knight, and he had that will in his possession here and in that will there are two revocation clauses, and Knight swears that he copied those clauses, and right here it may be well enough to make another remark. When he read the will to A. J. Davis, and the passage "hereby revoking all wills," Davis said: "There is no need of putting that in. I never made any other will. This is the first." Knight said to him, "Well, that is the way, that is the form, and I think it is safer to have it that way." And Davis said: "All right; let it go."

How do you fix that? There is no way out of it, that the will was made in 1880, revoking all former wills. What else? The conditions of the will of 1880, with regard to working the mine, with regard to bequests to nephews, with regard to bequests to others, with regard to the twenty thousand dollars given to Jeff Davis, and the twenty thousand dollars given to the girl; these provisions are

absolutely inconsistent with the provisions of this will of 1866. So on both grounds the will of 1880 destroys, cancels, and forever renders null and void the will of 1866, even if it had been the genuine will of A. J. Davis, and the Court will instruct you to that effect.

And after Mr. Keith had testified, the proponents in this case subpœnaed Mr. Knight, and if they thought that Knight would swear that Keith was not the man, why did they not put him on the stand? They ran no risk. He is an honest man. He would tell the truth. I never had the slightest fear in bringing an honest man on the stand. Never. I want facts, and I hope as long as I live that I shall never win a case that I ought not to win on the facts. No man should wish or endeavor to win a case that he knows is wrong.

I say there is not a man on this jury but believes in his heart and soul this minute that this will was made. You have to throw aside the testimony of a perfectly good man, and no matter whether what he said about Erwin Davis to Judge Knowles was true or not—and I must say that I never saw a witness on the stand in my life more eager to tell his story than Judge Knowles was. Never. He was bound to get it in or die. He answered questions over objections before the Court was allowed to pass upon the objections. Why? Because he is the President of the First National Bank. Now, without saying that he was dishonest about it, I say he was mistaken. Knight never said one word of that kind to him.

It was impossible that he could have said it. So is Mr. Talbot mistaken. So is Andrew J. Davis, Jr. mistaken, and so is John A. Davis mistaken. Think of the idiotic idea that a will, not signed, was given to Knight to keep, attested by two witnesses, and not signed by the testator. Idiotic! Now, as I understand it, gentlemen, you will have to find that that will was made.

Now, what is the next great question in this case, and the question that will be argued at some length, probably, by the other side? And why? Because it is the first and only point, so far as facts are concerned, that they have won in this case. Just one. And what is that? Our experts said that they thought that the ink was nigrosin ink, and the fact that they wanted a test proves that they were sincere. Their witnesses said they did not think it was nigrosin ink. Mr. Hodges said it had too much lustre, but that there was only one way in which it could be absolutely determined and that was by a chemical test. But, say these gentlemen, or rather said Judge Dixon, "the moment that ink turned red the whole case of the contestants was wrecked." Let us see.

If there had been no logwood ink in existence—not a particle—after the 20th day of July, 1866; if, on the night of the 20th of July, 1866, all the logwood ink on earth had been destroyed and then this ink had turned out to be logwood, why, of course, it would have been a demonstration that this paper was written as far back as the 20th of July, 1866. If it had turned out that it was written in nigrosin ink and that that had only been invented in 1878, it would have been a demonstration that the will was a forgery. But you must recollect the fact that it is written in logwood ink is not only consistent with its genuineness, but consistent with its being a forgery. Why? There was logwood ink in existence in 1890, plenty of it, and if Mr. Eddy wrote this will in 1890, he could have written it in logwood ink; and the fact that it is written in logwood ink does not show that it was written in 1866. Why? Because there was logwood ink in existence every year since 1866, till now.

Suppose I said that the paper was only ten years old and it turned out that it was forty, is that a demonstration in favor of the other side? If it turned out to be ten, it is a demonstration on our side.

But if it turned out to be forty, is not that consistent with the genuineness of the instrument, and also with the spuriousness of the same instrument? You can see that. Nobody is smart enough to fool you on that. Nobody. Take the whole question of ink out and the question is still whether Eddy wrote it or not. Take the ink all out and it is still the question whether Job Davis wrote it or not. Absolutely, and all the test proved was, that our experts—some of them—were mistaken about its being nigrosin ink. Mr. Tolman stated that it was impossible to tell without a chemical test; that it looked like nigrosin ink and from the manner in which it seemed to run he thought it was nigrosin ink, but that it was impossible to tell without a test. Mr. Hodges, their expert, said it looked to him like logwood ink; that it had too much lustre for nigrosin, but he added that it was impossible to tell without a chemical test. That is what he said. Mr. Ames said the same thing, and I appeal to you, gentlemen, if Mr. Ames did not have the appearance of an honest, of a candid, and of a fair man. Professor Hagan said that it was nigrosin ink, but he admitted that the only way to know was to test it. And what else? Their own expert, Mr. Hodges, said that logwood ink penetrates the paper. If this ink has been on here twenty-five years it penetrates the paper.

Sometimes an accident happens in our favor; a piece of that will was torn off this morning. You see the edge there torn off slanting. You see that "o–f"; how much that ink has sunk into that paper. Not the millionth part of a hair. It lies dead upon the top. Just see how the ink went in there—not a particle. It lies right on top. I would call that "float." There is the other edge. There is where the ink stops. It has not entered a particle. And when you go to your room I want you to look at it. That ink has not penetrated a particle. And let us see what this witness Hodges says: "Logwood ink penetrates the paper."

There it is, "to determine the nature of the ink, use hydrochloric acid." What else?

"I think this will was written with Reimal's ink, and that was made in Germany in the neighborhood of 1840. Reimal's ink penetrates the paper." And then they say that we endeavored to draw a distinction between modern and ancient. This is what Mr. Hodges says about it.

On the addition of hydrochloric acid to logwood ink it will turn to a bright red. The old-fashioned ink was manufactured by mixing a decoction of logwood with chromide of potash and formed a blue black solution. Logwood inks as made to-day differ from those, in that the modern logwood inks contain another sort of chrome than chromide of potash; they contain chromium in the form of an acetate or a chlorine.

Hodges was the man that talked about ancient and modern logwood inks; and he, before the test was made, said that the old logwood ink would turn a bright red, modern logwood not so bright. And after the evidence was all in, Professor Elwell came smilingly to the post and said, "they have got it exactly wrong end to; the older the duller and the newer the brighter." And after a moment said, "This was kind of dull." Before the test was made, Mr. Tolman swore, "I agree with Professor Hodges that if it is an old logwood ink it will turn a bright, scarlet red. In the case of modern logwood inks I don't agree with him, but to that extent I think his tests are good," and he drew that distinction before the test was made.

Gentlemen, you saw this will. I want to call your attention to it again. You see that "J" in Sconce's name, that is pretty red. Not so awfully scarlet, though, that it would affect a turkey gobbler. You see it in "Job"; you see it in "James Davis," but there it is brown, and not red, and not scarlet, and no flame in it, and Professor Hodges himself said that although both were logwood inks, he would not swear that Job Davis and James Davis were written with the same ink. Do you see the red in that "Job"?

Now find the red on that "s" of "James." He said he would not swear that they were written in the same ink, but both in logwood ink, that is to say, they might have been different inks. While I would not swear that they were the same inks, I would swear that both inks contained logwood. And that is all he swore to, and I must say that I believe he was a perfectly honest, fair gentleman.

Now, all that the ink test proves on earth is that it is logwood instead of nigrosin, and that does not prove that Eddy did not write the will, because there was plenty of logwood ink when he did write it. That is the kind of ink he used. And it has no more bearing—the fact that it turned out to be logwood—to show that it is a genuine will than though it had turned out to be iron ink. Suppose the experts had been wrong on both sides, and it had turned out to be iron ink, what would have happened then? Is it a genuine will? Nothing can be more absurd than to argue that that test settled the genuineness of this will.

Hodges says another thing; that perhaps the pen went to the bottom of the ink bottle and got a little of the settlings of the ink on it, when he wrote "James Davis," and consequently that has a different color. Well, if the pen had gotten some of this sediment on it, the more sediment the more logwood, and the more logwood the brighter the color. Instead of that, it is dull.

There is another trouble: With regard to the experts, while undoubtedly there are some men who do not swear to the exact truth, whether paid or not, undoubtedly some men swear truthfully who are paid. I do not believe that you doubt the testimony of Hodges simply because you paid him so much a day. I don't. And certainly we have found no men philanthropic enough to go around the country swearing for nothing. I judge of the man's oath, not by what he is paid, but by the manner in which he gives his testimony—by the reason there is behind it. That is

the way I judge and yet Senator Sanders judges otherwise, as he told you in a burst of Montana zeal. * * *

I like Montana, too, and I believe the Montana people are big enough and broad enough not to have prejudice against a man because he comes from another State. Every State in this Union is represented in Montana, and the people who left the old settled States and came out to the new Territories, dropped their prejudices on the way—and sometimes I have thought that that is what killed the grass. I like a good, brave, free, candid, chivalric people. I don't care where you come from—I don't care where you were born. We are all men, and we all have our rights; and as long as the old flag floats over me, I have just as many rights in Montana as I have in New York. And when you come to New York I will see that you have as many rights, if you are in my neighborhood, as you have in Montana. That is the kind of nationality I believe in. I hate this little, provincial prejudice; and yet Senator Sanders invoked that prejudice. That insults you. We did not insult you when we asked you when you went on the jury, if you cared whether the money stayed in Butte or not, or whether you were interested or not, or related or not. Those were the questions asked every juror, and we relied absolutely on your answers when you said that you were unprejudiced, and that you would give us a fair trial; and we believe you will.

Now, then, with regard to these experts, you have got to judge each one by his testimony; and it is foolish it seems to me, to call them vipers and pirates, as Senator Sanders did. A very strong expression—"vipers, pirates" living off, he said, the substance of others; and yet he had an expert on the stand, Mr. Dickinson; he had another, Mr. Elwell; he had another, Mr. Hodges; and after that he rises up before this jury and calls them "three vipers" and "three pirates." I never will do that. If I ask a man to

swear for me, and he does the best he can, I will leave the "pirate" out.

I will drop the "viper," and I will stand by him, if I think he is telling the truth; and if he is not I won't say much about him; I don't want to hurt his feelings. But I want to call your attention again to the fact that every expert on our side swore, knowing that they had three experts on the other side, and that if we made a mistake they could catch us in it; and we did make a mistake in that ink; and the test showed that we made a mistake, and that is all the test did show; but it did not show that the will is genuine any more than if it had turned out to be carbon ink; then both sides would have been mistaken. And yet after all it did turn out to be modern logwood ink, and it did turn out not to be Reimal's logwood ink, made of the chromate of potassium; did turn out not to be that, and I say on this will that there is an absolute, decided and distinct difference between the color on the name Job Davis and the name James Davis. And right here, I might as well say that that man Jackson, who came here from Butler, Mo.—and when I said Butler was a pretty tough place, rose up in his wrath and said it was as good as New York any day—that man says that when he saw the will he does not remember of seeing the names of James Davis and Sconce in it, but he did remember of seeing the name of Job Davis. I don't think he saw any of it. Now, there is another question here—because I have said enough about ink, at least enough to give you an inkling of my views.

There is another question. Why didn't John A. Davis take the stand? That is a serious question. John A. Davis had sworn, on the 13th of March, 1890, that his brother died without a will. John A. Davis, on the 24th day of July, 1890, filed a will in which he was the legatee. That will came into his possession under suspicious circumstances. What would a perfectly frank and candid man have done? What would you have done? You would not have allowed yourself to

remain under suspicion one moment. You would have said, "I got that will so and so." You would have let in the light, "I obtained it in such a place, it is an honest, genuine will, and here it is, and here are the witnesses to that will." But instead of that, John A. Davis never opened his mouth, except to file a petition swearing that it came into his possession on the first day of July. He knew that he was suspected, didn't he? He knew that the men in whose veins his blood flowed believed that the will was a forgery—knew that good men and women believed that he was a robber, and that he was endeavoring to steal their portion. He knew that, and any man that loves his own reputation and any man that ever felt the glow of honor in his heart one moment, would not have been willing to rest under such a suspicion or under such an imputation. He would have said: "Here is its history, here is where I got it, it is not a forged will. It is genuine. Here are the witnesses that know all about it. Here is how I came into possession of it."

No, sir. Not a word. Speechless—tongueless. And he comes into this court and comes on to this stand to be a witness, and is asked about a conversation he had with Burchett, and then we asked him, "How did you come into the possession of that will?" All his lawyers leaped between him and the answer to that question. They objected. If he came by that will honestly he would have said, "I am going to tell the whole story." He wants you to believe that he came by it honestly, doesn't he? He wants you to believe it. He not only wants you to believe it, gentlemen, but he asks twelve men—you—to swear that he came by it honestly, doesn't he? If you give your verdict that that is a genuine will, then you give your oath that John A. Davis came by it honestly; and he wants you twelve men to swear it. And yet he dare not swear it himself. He wants you to do his swearing. He is afraid to stand in your presence and tell the history of that will. He is afraid to tell the name of the

man from whom he received it. He is afraid to tell how much he gave for it; afraid to tell how much he promised. He is afraid to tell how they obtained witnesses to substantiate it in the way they have. Well, now, ought not you to let him tell his own story, ought not you, gentlemen, to be clever enough to let him do his own swearing?

Now, I will ask you again if he came by that will honestly, fairly, above board, would he not be glad to tell you the story? Would he not be glad to make it plain to you? If that was a perfectly honest will and came to him through perfectly pure channels, would he not want you to know it? Would he not want every man and woman in this city to know it? Would he not want all his neighbors to know it? And yet, he is willing, when this case is being tried, and when he is on the stand, and asked how he got the will—he is willing to close his mouth—willing to admit that he is afraid to tell; and I tell you to-day, gentlemen, that the silence of John A. Davis is a confession of guilt, and he knows it, and his attorneys know it. A client afraid to swear that he did not forge a will, or have it forged, and then want to hire a man to defend him and call him honest! Well, he would have to hire him; he would not get anybody for nothing. And yet he is asking you to do it. If John A. Davis came properly by it, let him say so under oath. Don't you swear to it for him, not one of you.

Now, there is another question. Why did not James R. Eddy take the stand? We charged him with forging the will. We made an affidavit setting forth that he did forge the will, and in this very court Mr. Dixon arose and said he was glad that the charge had been fixed, and the man had been designated. Judge Dixon said here, before this jury, when this case was opened, "the man who was charged with forging this will will be here. He will stand before this jury face to face; and he will explain his connections with the will to your satisfaction." That is what Judge Dixon

said. Where is your witness? Where is James R. Eddy? Why did you not bring him forward? I know he is here now—delighted with the notoriety that this charge of forgery gives him—with a moral nature that is an abyss of shallowness,—delighted to be charged with it, and he will probably be my friend as long as he lives, because I have added to his notoriety by saying he is a forger. Why did they not bring him on the stand? Mr. Dixon gives one reason. Because the jury would not believe him. And that is the man who is first found in possession of this will. That is the man in whose hands it is, and it is from that man that John A. Davis received it. And the reason that he is not put on the stand is that it is the deliberate opinion of the learned counsel in this case that no jury would believe him.

How does that work with you? James R. Eddy here—his deposition here—and they could not read his deposition because he was here—and they had him here and kept him here, so that we could not read his deposition. They were bound that he should not go on the stand. Why? Because the moment he got there he could be asked, Where did you find the will? Who was present when you found it? When did you first tell anybody about it? When did you first show it to John A. Davis? How much did he agree to give you for it? What witnesses have you talked to in this case? What witnesses have you written to in this case? What work have you done in this case? What affidavits have you made in this case? And what have you done with the other three wills that you have in this case?

Such questions might be asked him, and they were afraid to put him on the stand. Every letter that he had written would have been identified by him if he had been put on the stand. Maybe he would have been compelled to write in the presence of the jury, to see whether he would spell words correctly.

They knew that the moment he went on the stand their

case was as dead as Julius Cæsar. They knew it and kept him off.

Now, there is only one way for them to win this case. And that is to keep out the evidence. Only one way to win the case—suppress John A. Davis. Keep your mouth closed or defeat will leap out of it. Eddy, keep still. Don't let anything be seen that will throw any light upon this. I ask you, gentlemen of the jury, to take cognizance of what has been done in this case. Who is it that has tried to get the light? Who is it that has tried to get the evidence? Who is it that has objected? Who is it that wants you to try this case in the dark? Who is it that wants you to guess on your oaths? The failure of Eddy to testify is a confession of guilt. They dare not put him on the stand—dare not.

Now, gentlemen, there is a little more evidence in this case to which I am going to call your attention. Something has been said about a conversation in March, 1891. Sconce had his deposition taken in Bloomfield, Iowa. That deposition has been suppressed. John A. Davis was there at the time it was taken. John A. Davis and Sconce went into the passage leading up to the office of Carruthers. Mr. Burchett, sheriff of the county, a man having no possible earthly or heavenly interest in this business, happened to stop at the corner to read his paper—looked at it as he opened it—and he then and there heard John A. Davis say, "Stick to that story and I will see that you get all the money you have been promised," and thereupon Sconce replied, "All right I'll do it." Sconce denies it, and that denial is not worth the breath that he wasted in forming the denial. John A. Davis denies it. Of course he denies it. But he dare not tell where he got that will. He dare not do it. He wants you to do that for him. He wants you to lift him out of the gutter and wash the mud off him. He is afraid to do it himself.

I want to call your attention to that conversation, and that of itself is enough to impeach Sconce. That is enough of itself to show that John A. Davis was entering into a conspiracy or rather had entered into one with Mr. Sconce. Now, gentlemen, there is another thing, and we must not forget it. Curious people down in Salt Creek township, on the other side; of course there are plenty of good men there or the township could not exist, and we had a good many of them here—good, straight, honest, intelligent looking men. But the other side had some—all in the family—all of them.

Swaim, he was not in the family, but he is a clerk in Trimble's bank, where Wallace is the cashier, where they suppress depositions; say they are not finished when they are signed by the person who swears to them.

John C. Sconce, the only living witness, whose "ancient but ignoble blood has crept through rascals ever since the flood," cousin to James Davis, cousin to Job Davis, cousin to Mrs. Downey, cousin to Eddy, cousin to Dr. Downey by marriage, brother to T. J. Sconce, Jr., brother-in-law to Abe Wilkinson, cousin to Tom Glasgow and Sam, cousin to Moses Davis, cousin to Alex. Davis, uncle to Henshaw's daughter, and father-in-law of George Quigley. Every one of them united. Blood is thicker than water. Eddy stuck to his family.

James R. Eddy—cousin to Sconce, son of Mrs. Downey, (Mrs. Downey, the duster lady, who remembers that Davis asked her to remain, but didn't ask her advice, didn't have her sign the will, didn't give her any bequest, but there she was with her duster), grandson of James Davis, nephew of Job Davis, and related by blood or marriage to both the Glasgows, Moses and Alexander Davis, to T. J. Sconce and J. C. Sconce, Jr., Abe Wilkinson, George Quigley, S M. Henshaw, (the celebrated lawyer). J. L. Hughes, and Eli Dye, brother-in-law to C. O. Hughes, and foster brother

to John Lisle, and Mrs. A. S. Bishop. And it is just lovely about John Lisle.

John Lisle is one of the fellows that saw this will. "How did you come to see it, John?" "James Davis," he says, "was my guardian and he had to give a bond, and so one day when James Davis was away from home, I thought I would go and see the bond."

Of course he thought James Davis kept the bond that he gave to somebody else—to the county judge; but Mr. Lisle pretends that he thought the bond would be in the possession of the man who gave it. And so he sneaked in to look among the papers. Now, do you believe such a story—that he thought that man had the bond? Didn't he know that the bond was given to somebody else? Foolish! Bishop swears the same thing; James Davis was guardian for his wife, and he was looking to see if James had the bond; and another fellow by the name of Sconce, was looking for a note, and when he opened this double sheet of paper folded four times and happened to see Sconce's name he said: "Here it is—a promissory note."

Mary Ann Davis—that is to say, Mrs. Eddy, that is to say, Mrs. Downey, is the mother of J. R. Eddy, daughter of James Davis, sister to Job, second cousin to Sconce, wife of Downey, and related by blood or marriage to Tom and Sam Glasgow, Moses and Alexander Davis, Abe Wilkinson, S. M. Henshaw, J. C. Sconce, Jr., T. J. Sconce, George Quigley and C. O. Hughes. All right in there, woven together.

E. H. Downey—son-in-law of James Davis, brother-in-law of Job, husband of Mary Ann Davis-Eddy-Downey, and step-father of Mr. Eddy.

J. C. Sconce. Jr. —cousin to Eddy, nephew of J. C. Sconce, Sr., cousin to Mrs. Downey, cousin of E. H. Downey, son-in-law of Henshaw, cousin to George Quigley, related to

Tom and Sam Glasgow, Abe Wilkinson and Moses and Alex. Davis.

George Quigley—son-in-law of Sconce.

Sam Glasgow—cousin of Sconce, son-in-law of Dye, brother to Tom Glasgow, brother-in-law to Moses and Alex. Davis, cousin to Abe Wilkinson, and related by marriage to J. R. Eddy. Here they are, same blood. All have the same kind of memory; runs in the blood.

Henshaw—father-in-law to J. C. Sconce, Jr. Lisle—adopted son of James Davis, and his ward, and foster brother to Eddy. A. S. Bishop—married to Allie Lisle, ward of James Davis, foster sister of James R. Eddy.

T. J. Sconce—Eddy's cousin, J. R. Sconce's brother, brother-in-law and cousin to the Glasgows, cousin to Alex. and Moses Davis, brother-in-law to Abe Wilkinson and uncle to J. C. Sconce, Jr.

Moses Davis—cousin of Sconce, brother-in-law to the Glasgows, cousin to Abe Wilkinson, brother of Alex. Davis, and related to Eddy and Arthur Quigley.

Alexander Davis—cousin to Sconce, brother of Moses Davis, brother-in-law to the Glasgows, cousin to Wilkinson and related by marriage to Arthur Quigley.

Abe Wilkinson—brother-in-law to Sconce, cousin to Alex. and Moses Davis, and cousin to the Glasgows.

Tom Glasgow—cousin to Sconce, and Abe Wilkinson, and a brother-in-law of Moses Davis, and a brother to Sam Glasgow, and related by marriage to Eddy.

Arthur Quigley—brother-in-law to Alex. Davis, and brother to George Quigley, who is a son-in-law of Sconce. John L. Hughes—his nephew married Eddy's wife's sister. Eli Dye—father-in-law of Sam Glasgow.

There they are, all of them related except Swaim and Duckworth and Taylor; and Duckworth, he is in the tie business along with Eddy. There is the family tree. All growing on the same tree, and there is a wonderful likeness

in the fruit. Why, that Glasgow has as good a memory as Sconce. He remembers that this is the same will he saw—paper like that, and he swears—I think it is Sam Glasgow—that he did not read the contents or see a signature. And yet he comes here, twenty-five years afterwards, and swears it is the same paper. And then the paper was clean and now it is covered with all kinds and sorts of stains.

Now, gentlemen, take the signature of A. J. Davis, and I want you all to look at it. I say it is made of pieces. I say it is a patchwork. It is a dead signature. It has no personality—no vitality in it, and I want you to look at it, and look at it carefully. I say it is made of pieces. Of course every counterfeit that is worth anything, looks like the original, and the nearer it looks like the original the better the counterfeit. All the witnesses on the side of the proponent who have sworn that it is his signature, also swear that he wrote a rapid, firm hand—nervous, bold, free, and that he scarcely ever took his pen from the paper from the time he commenced his name until he finished; and I want you to look at that name. I will risk your sense; I will risk your judgment—honest, fair and free—whether that is a made signature, or whether it is the honest signature of any human being.

And now, gentlemen, one word more. I contend, first, that the evidence shows beyond all doubt that Job Davis did not write this will. Second, that it is shown beyond all doubt, that James R. Eddy did write this will, and that that evidence amounts to a demonstration. I claim that the will of 1880 was made precisely as E. W. Knight and Mr. Keith swear; that that will was utterly inconsistent with the will of 1866, even if that had been genuine; that it revokes that will, that its provisions were inconsistent, and that afterwards that will was destroyed, and that there is not one particle of evidence beneath the canopy of heaven to show that it was not made and to show that it was not destroyed.

And the Court will instruct you that the will of 1866, even if genuine, is not revived.

This is the end of the case. So I claim that the probabilities, the reason, the naturalness, are all on the side of the contestants in this case—all. And I tell you, that if the evidence can be depended on at all, A. J. Davis went to his grave with the idea that the law made a will good enough for him. Do you believe, if he were here, if he had a voice, that he would take this property and give it to John A. Davis; that he would leave out the children of the very woman who raised him; that he would leave out his other sisters, that he would leave out the children of his sisters and brothers? Do you believe it? I know that not one man on that jury believes it.

This case is in your hands. That property is in your hands. All the millions, however many there may be, are in your hands; they are to be disposed of by you under instructions from the Court as to the law. You are to do it. And, do you know, there is no prouder position in the world, there is no more splendid thing, than to be in a place where you can do justice. Above everybody and above everything should be the idea of justice; and whenever a man happens to sit on a jury in a case like this, or in any other important case, he ought to congratulate himself that he has the opportunity of showing, first, that he is a man, and second, of doing what in his judgment ought to be done, and there will never be a prouder recollection come to you hereafter than that you did your honest duty in this case. Say to this proponent: "If you wanted to show us that you got this will honestly, why didn't you swear it; if you wanted us to believe it was a genuine will, why didn't you have the nerve to take your oath that it is a genuine will?"

Now, you have the opportunity, gentlemen, of doing what is right. Your prejudice has been appealed to, but I say

that you have the manhood, that you have the intelligence, and that you have the honesty to do exactly what you believe to be right; and whether you agree with me or not, I shall not call in question your integrity or your manhood. I am generous enough to allow for differences of opinion. But when you come to make up your verdict, I implore you to demand of yourselves the reasons; to be guided by what is natural; to be guided by what is reasonable. I want you to find that this will was found in the possession of Eddy in April or March, next in the hands of John A. Davis; and that John A. Davis dare not tell how he came in possession of it. John A. Davis, on the edge of the grave—for this world but a few days, and according to the law without that will he could have had an income of over fifty thousand a year. He was not satisfied with that. He wanted to take from his own brothers and sisters, wanted to leave his own blood in beggary.

He never saw the time in his life that he could earn five thousand a year—never. And he was not satisfied with fifty thousand—he wanted four and a half millions for himself.

Gentlemen, I want you to do justice between all these heirs. I want you to show to the United States that you have the manhood, that you are free from prejudice, that you are influenced only by the facts, only by the evidence, and that being so influenced, you give a perfectly fair verdict—a verdict that you will be proud of as long as you live. How would you feel, to find a verdict here that this is a good will, and afterwards have it turn out to be what it is—an impudent, ignorant forgery?

Now, all I ask of you is to take this evidence into consideration. Don't be misled even by a Christian, or by a sinner, for that matter. Let us be absolutely honest with each other. We have been together for several weeks. We have gotten tolerably well acquainted. I have tried to treat

everybody fairly and kindly, and I have tried to do so in this address.

I have had hard work to keep within certain limits. There would words get into my mouth and insist on coming out, but I said: "go away; go away." I don't want to hurt people's feelings if I can help it. I don't want anyone unnecessarily humiliated, but I say whatever stands between you and justice must give way; and if you have to walk over reputations—and if they become pavement you cannot help it. You must do exactly what is right, and let those who have done wrong bear the consequences.

Now, gentlemen, I have confidence in you. I have confidence in this verdict. I think I know what it will be. It will be that the will is spurious, and that the will of 1880 revoked it, whether spurious or not. That is my judgment, and I don't think there is any man in the world smart enough or ingenious enough to get any other verdict from you as long as John A. Davis was afraid to swear that it was an honest will; as long as James R. Eddy, the forger, dare not take the stand; and they will never get a verdict in this world without taking the stand, and if they do take it, that is the end. There is where they are.

Now, all I ask in the world, as I said, is a fair, honest, impartial verdict at your hands. That I expect. More than that I do not ask. And now, gentlemen, I may never see you again after this trial is over—separated we may be forever—but I want to thank you from the bottom of my heart for the attention you have paid to the evidence in this case and for the patient hearing you have given me.

NOTE: The Jury disagreed and the case was compromised.

# RUSSELL CASE.

# ARGUMENT BEFORE THE VICE-CHANCELLOR IN THE RUSSELL CASE.*

IF YOUR HONOR PLEASE: I agree with Mr. Pancoast at least in one remark that he made—I think about the only one—that John Russell is dead. I think there is no controversy about that. But as to the other remarks made and the positions taken by him, I fail to agree.

In the first place, for several hundred years the courts of England, and for more than a hundred years the courts of this country, have very jealously guarded the right of dower; and wherever a woman has by antenuptial agreement given up her right of dower, all the courts have decided—and I know of no exception, and Mr. Pancoast has brought forward none—that at the time she made the contract waiving her dower she must have been in the possession of all of the facts, so that she could act with absolutely full knowledge. And where a man seeks to make an agreement by virtue of which the wife, or the supposed wife, shall waive her dower, decision after decision says that he must tell the truth, and the whole truth, and that it is just as fraudulent to suppress a fact as to manufacture one. He must tell the absolute truth. The relation of the parties is such, and the dower right is such, that the courts will not take the right away from the woman unless

*Russell *vs.* Russell, before Martin P. Grey, V. C., Camden, N. J., June 21, 1899. This was Colonel Ingersoll's last appearance in public. The report of this argument has been made from the stenographer's notes and therefore of necessity incomplete. It was delivered without notes and the proofs were not seen or corrected by the author. No decision in this case has as yet been rendered, August 1, 1900.

she gives it freely, and, at the time she gives it, knows all the facts bearing upon the question as to whether she should or should not release or waive her dower.

Now, on that same line the courts have taken another step. They do not put upon the wife the burden of showing that the husband was guilty of fraud directly; they simply put the burden upon the wife of showing what his property was and what the consideration was in the agreement; and then the court steps forward and says that if the amount is disproportionate when you take into consideration his wealth, then the burden is immediately shifted, and the person seeking something under his will, or seeking his property, must show that when the woman signed the antenuptial agreement she had been put in possession of all the facts; that she then knew, and knew from him, what he was worth; and that if she did not and the amount in the agreement is disproportionate to his estate, the agreement is null and void. Then gentlemen who represented the heirs of the testator, or the legatees, said: "Well, it was generally known that he was a rich man; that was his reputation in the neighborhood; and she, if she had taken any pains or acted with reasonable discretion, could have ascertained the fact."

The Court then took another step in advance and said that it was not her duty; she was not bound to inquire as to his wealth; and yet Mr. Pancoast talks as though the maxim of *caveat emptor* applies in this business—as though it had been a bargain between two sharpers, she making what she could out of his admiration, and he cheapening her to the extent of his power, driving the best possible bargain, saying that she should have looked out for her rights; that she should have investigated and found out about his property; that she should have called in a detective to ascertain what it was, and that the courtship should have been carried on in that commercial spirit.

But the law says: No; she is not obliged to ask a question. She is not obliged to take into consideration any thing that is said in the neighborhood. She relies upon one source for her information, and that is the man whom she is going to marry. And the law says he shall meet her with perfect candor, and there shall pass from his lips nothing but words of truth; and then if, being in full possession of all the truth, she makes the contract, that contract shall stand; otherwise, that it shall not.

There is no use of my quoting these decisions—there is no decision any other way.

The first question that arises is as to the condition of this contract under evidence—this antenuptial contract. Is the amount disproportionate to his estate?

If we are to try this case relying on the notions of Mr. Russell, and say that his opinion shall govern, why, it may be said that Russell imagined that he was generous. That would be astonishing, but hardly as astonishing as the fact that Mr. Pancoast thinks he is generous.

Mr. PANCOAST: You don't know me very well.

Mr. INGERSOLL: I don't think you would do so badly as that. It may be that Russell imagined that one thousand dollars in stock of some bank was a liberal provision in his will. I don't know whether he did, and I do not care whether he did or not. The question is not for Mr. Russell; it is not a question for Mr. Pancoast, and it is not a question for myself; it is for your Honor to decide. Is the amount mentioned in this antenuptial contract, taken together, if you please, with the fifteen hundred dollars in the will—is the amount made by the addition of the two amounts—disproportionate to this estate?

There is a case here from Illinois, Achilles *vs.* Achilles (which ought to be a strong case), in which I believe the man was worth seventeen or eighteen thousand dollars; and my recollection is that he provided an annuity of three

hundred dollars for his wife, with rent free of a house; also rent free of a vacant lot for a garden. That is what he gave her—what would be about four hundred dollars or five hundred dollars a year; and he had eighteen thousand dollars. The Supreme Court of Illinois thought that amount so disproportionate to the value of the estate that the provision was set aside.

Now, in this case, five thousand dollars or six thousand dollars—we will say five thousand anyhow—is the amount; and there is an estate worth a quarter of a million or, to come even within their own testimony, worth two hundred thousand dollars.

The first question for your Honor to decide is whether that amount is so disproportionate to his estate that—unless the other side show that she was put in possession of all the facts—it must be set aside.

The defendants in this case have not endeavored to show that Mr. Russell ever informed the complainant what he was worth. The only evidence we have on that point is what he said with regard to his poverty—not one word about how much he had, and as to his poverty, only indirectly. And here is the way the old man's mind worked: They were first engaged to be married. Mr. Pancoast believes, or at least he has expressed himself as though he thought, that a man of seventy-five could not be in love (I do not know what his experience is, but I hope no fate like that will overtake me), and that a woman of fifty could not feel the tender flame. I do not know enough about biology to state with accuracy how that is, but I heard a story once about a colored woman having lived to be one hundred and twenty-five, and a man interested in the question that Mr. Pancoast has raised asked this aged lady how old a woman had to be before she ceased to have thoughts about love?

And the old woman said: "I don't know, honey;

you will have to ask somebody older than I is." And I guess that is about the experience of the race.

Mr. Russell said to this woman: "I want to make a contract with you, and I will give you fifteen thousand dollars." She said that was satisfactory, and Russell—having a little Semitic blood in his veins, I guess—said to himself, "I must have offered too much, she accepted so readily." So the next time he saw her he said, "I do not think I can make it more than ten thousand dollars." "Well," she said, "all right; ten thousand dollars will do." In the meantime he was getting a little older, and the last time he came he said he could not make it more than five thousand dollars, because his estate was so entangled that he did not know that he would be able to pay it—that it would be a pretty difficult job to pay that amount within six months. Well, she accepted, and in order that she should accept it, he said that, in addition, he would provide well for her in his will—that he would make a liberal provision. There is the contract. No evidence in the world that he told her what he was worth; the only evidence is that he pleaded poverty.

And right at this point, I say that all the decisions I know of declare the contract void unless the defence, on their part, show that she was put in full possession of all the facts; and that the defence in this case did not do.

Now, so far as this contract is concerned, on the evidence it is void, and void notwithstanding the fact that the trustees paid her five hundred dollars; and Mr. Pancoast, according to my recollection, is mistaken when he says that she demanded the balance. He offered her the balance, and she stated that she had been informed that she had some rights against the estate, and therefore refused to receive it. That is the fact about it. He sent her five hundred dollars, and wanted to send her the balance, but she would not have it. Then he asked her to take it, and showed her a

receipt to be signed, in which she waived everything, and she refused to sign it.

Under those circumstances I do not think it is possible for your Honor to say that she has been estopped.

The next point raised by Mr. Pancoast is that the oral agreement to provide well for her in the will is void under the statute of frauds.

Well, I am free to say that I do not know how it is in New Jersey, but in every other State in which I am acquainted with the law, the statute of frauds, to be operative, must always be pleaded. I do not know how it is here. That statute has not been pleaded in this case, and I never heard of it until the argument to-day. If it is to be pleaded before it can be invoked, it is too late to cite it now. But let us go on the supposition that he is right, that the antenuptial contract is void, and that the other contract to provide for her in the will is also void. Then where does that leave us? That leaves us exactly as though no contract had been made. That leaves us without any antenuptial contract, without any agreement to provide liberally for her in the will. Then what is our condition? Then the wife is entitled to her dower in the real estate; that follows as a necessity. She loses her interest in the personalty, because that is given away by the will, but if the antenuptial contract and parole agreement are both dead—one because disproportionate to the estate and because of the fraud of Russell, and the other on account of the statute of frauds, then she is left with her dower in the real estate. It is impossible, it seems to me, to arrive at any other conclusion. It certainly would be inequitable to say that she had been estopped on account of what was done with the five thousand dollars in the hands of the trustees.

There is another view of it. There has been, if the contracts are good, a partial performance; and that of itself would take it out of the statute of frauds.

Then the question is, if it is out of the statute of frauds, and if it is out because the contract has been partially performed, the next question, and, it seems to me, the only question that arises, is, has a court of equity the right to determine what the words "You shall be well provided for," "I will provide for you liberally in my will," or "I will make a liberal provision for you in my will"—what those words mean?

According to the idea of counsel on the other side, the Court is bound to decide according to the meaning that was in the mind of Mr. Russell. But there comes in here another principle. The only way we can find the meaning in his mind is by finding the words that he used; and we are not to import his meanness into the words, if he had meanness; neither would we import his generosity, if he had generosity. We would give to those words their natural meaning, apart from the thought of the one who used them, and apart from the thought of the one who heard them, because the words are known, their meaning is known and can be ascertained by the Court.

Now, the word "reasonable" is about as hard a word to define as a court was ever called upon to define, and yet courts of law and courts of equity, in hundreds and thousands of instances, have passed upon the meaning of the word "reasonable," and have not only passed upon its meaning, but have given it from time to time definitions.

A man must give reasonable care to the property of another given into his keeping. Well, what is reasonable care? Is it reasonable for him to take such care of it as he does of his own? Not if he is unreasonably careless of his own. And the law takes another step, and says you must take such care of it as is reasonable, as a reasonable man would, and the courts then go on to define what a reasonable man under the circumstances would do. Now, there is no word in the language that courts have been

called upon to define that is vaguer—where the line between dawn and dusk, between light and dawn, has to be drawn with greater care or greater intelligence—than that word "reasonable." The word "appropriate" has been decided again and again. The word "necessary," the word "convenient," the word "suitable"—"suitable to his or her condition in life"—"suitable to the condition of the party"—all these words have been given judicial meaning hundreds and thousands of times.

And now we come to the word "liberal," is that a hard word to define?

Everybody in the world has his notion of what liberal means. Given the circumstances and the actions of the man, and everyone you meet is ready to decide whether he is liberal or illiberal. A man loses his pocketbook; five thousand dollars in it; a boy finds it, returns it to him, and he gives the boy five cents. There is not a man in the world, no matter whether he is a judge or not, who would say that was liberal—nobody. If there was only a dollar in the pocketbook and he gave him half of it, you would say that was liberal. You would have to take the circumstances into consideration. You also take into consideration the circumstances of the man who found it. If he is a poor man you can not be liberal unless you give him more than you would give the man who did not need it.

What is a liberal provision for a wife that has no means of making her own living? If the man is able, nothing less than a sufficient sum to take care of her. Suppose Mr. Vanderbilt, who is worth two or three hundred millions—I do not know what he is worth, and I do not care, but I suppose he is worth a hundred millions—should agree to make a liberal provision for his wife, and make it so that he gets away from the statute of frauds, and thereupon leaves her twenty-five hundred dollars. Nobody would say that was liberal. Why? Because that word is capable of a clear and reasonably exact definition. To be liberal, he

would have to leave her enough to live in the same style that she has been living in with him, and enough to keep her during her life. Anything less than that would be illiberal, mean, contemptible.

So I might go through all the actions of men in regard to contracts, payments, divisions. We all know what liberal means, and it always means a little more than the law could compel you to do. If a man hires another and says, "I will give you five dollars a day," and the other works twenty days, and he gives him one hundred dollars; nobody says he is liberal, and nobody says he is mean. But when the man goes further and says, "You have worked well; I am very much pleased with what you have done; there is fifty dollars (or twenty-five dollars) as a present," everybody says, "Why, that is liberal, that is generous." But no man ever yet got the reputation of being generous by doing exactly what he was bound to do. He may have the reputation of being just, honest, of keeping his contracts, of being a good, fair, square man, but he never got the reputation of being generous, and he never got the reputation of being liberal, by simply doing what the law compelled him to do, or what his contract compelled him to do, or what he did in consideration of that for which he had received value.

In this case Russell said, "I will make a liberal provision for you in my will." If he had made no will the law would have given her one-third of his personal property. That would not have been liberal. That would simply have been the law. That is the law, and that is what the law has said is just. Whether the law is right or not, I do not know, but that is what the law says. That is just, and no man can be liberal unless he goes just a little beyond justness—just a little.

So when he says, "I will provide for you liberally in my will," in order to comply with that agreement he has got to go somewhat beyond the law, and the law says one-third;

it is impossible for him to be liberal without going a little beyond one-third, and then he is only liberal to the extent that he does go beyond what the law fixes.

Now, it seems to me that there is no escape from that. Neither does it seem to me that there is the slightest difficulty in your Honor fixing what is liberal—no more difficulty than you would have in saying what is right; and we have hundreds of cases where a man has said, "If you will do so and so I will do what is right," and it has been enforced—has been enforced thousands and thousands of times. "I will do what is right," "I will do what is just," "I will do what is liberal," "I will do what is necessary and proper"—all these words have been judicially determined and their meaning fixed by hundreds and thousands of decisions. I do not see the slightest trouble in that.

So, in this case, looking at the parole contract as bad—and it is bad—the woman is at the very least entitled to her dower; and the only way that she can be robbed of it is by holding that a contract is good which was made by her without any knowledge of the value of the property that he held. But every decision says that makes the contract void, and that she is not bound to make examination herself; he is bound to give her that information. The law says that when two hearts come together in that way, and there is supposed to be affection, they must be candid. He must conceal nothing. His hands must be open; not only must what he says be the truth, but he must tell it all, and she cannot be bound by any contract that she does not make in the full blaze of all the facts. She must have them all, and if he keeps back any, if he makes himself poorer than he is, he destroys the contract. If he tries to take advantage of her the law says he only takes advantage of himself. The Court is her attorney; the Court appears for her for the preservation of her dower right; and the Court will not allow a man to take advantage of any misstatement, of

any suppression, of any fraud, no matter whether active fraud, or a fraud that rests in non-action. The Court is her attorney and says the contract is bad, and if you try to deceive her you deceive yourself; and if you fail to put her in possession of all the facts the consideration of the contract fails and it is dead and done.

If these decisions have any meaning, that is the law, and if there is a decision on the other side, I should like to hear it. I haven't found one, not one; and in all the cases where applications have been made to set aside an antenuptial contract, I have not found one where the disproportion was as great as it appears in this case. The difference is between six thousand five hundred dollars and an estate of a quarter of a million. I have not found one that had anywhere near that disproportion, and yet case after case is set aside on the disproportion of about four hundred dollars or five hundred dollars a year and the fortune of eighteen thousand dollars—one where it is thirty thousand and she gets about five hundred dollars. I do not know of a solitary case where the deception was as great as in this. I do not say that he intentionally deceived, because I do not know, and, as Mr. Pancoast remarked, he is dead. We simply go on the facts that are shown.

Now, as to the value of the property, I do not think there is any real dispute about that. Mr. Russell is one of the executors, and when he went over the real estate here on the stand he had in his hand a list of all that real estate, with the values put upon it by our two witnesses; and he was asked the value, and he looked at the parcel, and he looked at the amount, and I tried it here myself, just to see if I could guess what his answer would be. I deducted in my own mind fifty per cent. sometimes, sometimes thirty per cent., sometimes forty per cent., and I hit it within five dollars in fifteen cases, just guessing by myself what he would say, because I knew that he was going by the figures

without the slightest reference, in many cases, to what the property was worth. He estimated one parcel at two thousand two hundred dollars; I think it was worth about five thousand dollars. He fixed another at three thousand two hundred and fifty dollars; I think it is worth about five thousand dollars. He fixed a third at four hundred dollars; I think it is worth about six hundred dollars. When he was asked about those same parcels, without the figures he sometimes went beyond the price that our experts had fixed; sometimes he doubled his own price, and sometimes he fell below his price. I think in one or two instances he even fell below; but that at the time he had in his mind, any knowledge apart from the figures that had been made by the experts, I do not believe.

THE VICE CHANCELLOR: Is it of any significance? If your argument is right the disproportion is so great that it makes no difference.

MR. INGERSOLL: Perhaps not. Then his co-executor was not called at all. So I take it that we can safely say that the property was worth in all two hundred thousand dollars, taking it according to their own estimate. The estimate of the man who fixed it on account of the inheritance tax, I do not think is of any weight. He did not go over it all and did not see it. I say the disproportion is so great—they having failed to show that the knowledge was in her possession, put there by him—that the contract must be set aside. That we insist upon.

One of two things has to be done, it seems to me: Both those contracts set aside and her dower in the real estate given to her, or both contracts allowed to stand and the court to fix what is a liberal provision in the will—and in that, for one, I see no difficulty. "Liberal" is a word as easily understood at least as the word "reasonable"—certainly as the word "necessary," certainly as the word "convenient," certainly as the word "suitable," and in fact I

might say as almost any other word except some scientific term that limits its own definition.

Now, we have already said that a liberal provision could not be less than the law gives us. In that view of the case, she should have, in lieu of her dower, the five thousand dollars, and, on account of the will she should have at least whatever one-third of the personal property is worth.

It seems to me that one of those two courses must be pursued. Here is an old man who wants to get a woman some twenty-five years younger than he is. Just think how Mr. Pancoast's blood would throb at a woman twenty-five years younger than he. Think what visions would haunt his brain. Think of the Cupids that, with outstretched wings, would follow in the darkness of the night as he contemplated his happiness. Here was a man of that age who wanted this woman, and taking into consideration his ideas of money—a man that considered a thousand dollars a liberal provision; one worth two hundred and thirty thousand dollars or two hundred and forty thousand dollars, offering her five thousand dollars—he wanted her badly. You can hardly think of a more wonderful thought visiting his brain than that of giving all that money for a woman nearly twenty-five years younger than himself.

I want to be kind to Mr. Russell; I want to say that he was honestly in love with this woman. I want to be respectful to her by saying that the affection was reciprocated, and that on her part it was absolutely honest. But I do say that Mr. Russell withheld from her the information as to his property. Mr. Russell endeavored to drive the best bargain he could, and I say that by keeping back the facts that he was bound to make known to her, he defeated himself—that while he did deceive her, he destroyed his contract.

Now, by no way of reasoning I can think of can you arrive at any different conclusion. All matters of this kind,

of course, should be dealt with from a high standard, the highest standard we have, the very highest. The affection that man has for woman is, in my judgment, the holiest and the most beautiful thing in nature; the affection that woman has for man—that affection, that something that we call love—has done all there is of value in the world. It has civilized mankind; made all the poems, painted all the pictures, and composed all the music. Take it from the world and we shall be simply wild beasts—far worse than wild beasts, for they have affection for each other and for their young.

So I say this should be treated from the highest possible standpoint, and treating it in that way your Honor must say that a woman must act with a full knowledge of every fact that had any bearing upon the question to be decided by her; and if she was not put in possession of all of these facts, by the man who said he loved her, then the contract is void.

On the other hand, if the contract is held valid, and with it the agreement to provide liberally for her in his will, then I say that there can be no liberality that does not go beyond the law. In the one case she is entitled to five thousand dollars and one-third of the personalty, and in the other case she is entitled to her dower.

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